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Monday
November 5, 1984

Selected Subjects

Air Pollution Control
Environmental Protection Agency

Bridges
Coast Guard

Chemicals
Environmental Protection Agency

Coal
Land Management Bureau

Communications Equipment
Federal Communications Commission

Employment
Wage and Hour Division

Household Appliances
Federal Trade Commission

Marketing Agreements
Agricultural Marketing Service

Motor Carriers
Federal Highway Administration

Natural Gas
Federal Energy Regulatory Commission

Occupational Safety and Health
Occupational Safety and Health Administration

Recordkeeping and Reporting Requirements
Environmental Protection Agency

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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Presidential Documents

Title 3—

The President

Proclamation 5275 of November 1, 1984

National Alzheimer's Disease Month, 1984

By the President of the United States of America

A Proclamation

The month of November is traditionally a time for families to come together and give thanks for their blessings. It is fitting that November also be designated as National Alzheimer's Disease Month to express our compassion for those who suffer from this heartbreaking disorder and our appreciation for the many families who devote themselves to the care of afflicted loved ones who no longer can help themselves.

Alzheimer's disease is the major cause of serious confusion and forgetfulness in old age. The death of brain cells, a mark of this devastating disease, at first causes erratic behavior and unusual memory lapses and ultimately results in the "senility" once thought to be a normal part of old age.

Experts estimate that some two million Americans suffer from Alzheimer's disease, including between five and ten percent of our population over 65 and 20 percent of those over 80. If present trends continue, anticipated increases could double the number of victims in these age groups by the turn of the century.

In addition to the unhappy victims, untold numbers of others suffer the physical, emotional and financial burdens of caring for relatives who are ill with this disease. Families care for their ill relatives at home, if possible, and later in nursing homes. Between one-third and one-half of all patients in those institutions suffer from Alzheimer's disease or another serious irreversible form of dementia.

The medical research community is focusing special attention on this disease, and research is beginning to reveal many of its mysteries. Thus, research is providing the affected families with a great deal of hope. Until a cure is found, however, these families need our support and understanding. Public awareness of their problems is growing, due to the work of voluntary health associations—notably the Alzheimer's Disease and Related Disorders Association—but much remains to be done.

The Congress, by House Joint Resolution 451, has designated the month of November 1984 as "National Alzheimer's Disease Month" and authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of November 1984 as National Alzheimer's Disease Month. Let us mark this month by striving to educate ourselves about Alzheimer's disease and by participating in appropriate activities and observances.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of November, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 84-29160
Filed 11-1-84; 3:57 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5276 of November 1, 1984

National Blood Pressure Awareness Week, 1984

By the President of the United States of America

A Proclamation

High blood pressure is a disease that affects as many as 60 million Americans and is a major factor in the 1.25 million heart attacks and half-million strokes every year in the United States. Heart attacks anually kill 500,000 Americans, and the economic cost to the Nation in direct medical costs, lost work days and lost production will soar into the tens of billions of dollars.

Unfortunate as these statistics are, there are many encouraging signs that we are making progress in controlling this disease. Death rates from heart attacks and stroke have been declining dramatically for more than a decade. From 1972 to 1982, for example, the death rate for heart attack dropped by 27 percent, and for stroke by 42 percent.

Often called the silent killer because it usually exhibits no symptoms, high blood pressure is an insidious condition that may lead to heart attack, stroke or kidney damage. Along with cigarette smoking and elevated blood cholesterol, it is one of three major risk factors for cardiovascular diseases.

High blood pressure can be detected quickly and painlessly by use of an inflatable arm cuff and stethoscope. All Americans should take advantage of the high blood pressure screening activities in their communities, their work places and their public health facilities. Once detected, high blood pressure usually can be controlled very effectively. Weight loss, salt restrictions and exercise may be prescribed as possible remedies. When these do not work, a physician can select an appropriate treatment program from a wide range of drug therapies.

At least one of the factors responsible for the decline in death rates from heart attacks and strokes is enhanced awareness among the public and the medical profession of the dangers of high blood pressure and the steps that people can take to bring it under control. This growing awareness has been brought about largely through the efforts of the National High Blood Pressure Education Program, a coordinated program involving the Federal government, community volunteer organizations, medical associations, industry and labor, state and local public health agencies and many other groups. We must intensify our efforts to promote public understanding of the dangers of this prevalent condition and public knowledge that effective treatment methods are available.

To stimulate public awareness of the role high blood pressure plays in bringing about heart attacks and strokes and to encourage all Americans to check their blood pressure and obtain treatment if it is elevated, the Congress, by Senate Joint Resolution 260, has designated the week beginning November 11, 1984, as "National Blood Pressure Awareness Week" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning November 11, 1984, as National Blood Pressure Awareness Week. I invite all interested government agencies and officials and the American people to observe this occasion with appropriate observances.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of November, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 84-28161
Filed 11-1-84; 3:58 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5277 of November 1, 1984

National Reye's Syndrome Week, 1984

By the President of the United States of America

A Proclamation

Reye's Syndrome is a rare and often fatal illness that affects children under the age of 18 who are recovering from influenza or chicken pox. Reye's Syndrome can be deceptive, attacking just when it appears that the child is getting better. The symptoms—which include mental confusion, persistent or continuous vomiting, loss of energy, sleepiness and belligerent behavior—may develop quickly, sometimes within half a day. Immediate medical care is essential. If not treated promptly, a child suffering from Reye's Syndrome may go into coma and die.

The number of cases of Reye's Syndrome has dropped dramatically since continuous national surveillance was established by the Center for Disease Control in December 1976. This does not mean, however, that the public should become complacent about this illness. Although Reye's Syndrome is rare, it is life-threatening. About one-third of its victims do not survive.

Much remains to be learned about Reye's Syndrome, including what causes it and how it can be prevented. Voluntary organizations, such as the American Reye's Syndrome Association and the National Reye's Syndrome Foundation, have conducted educational campaigns to acquaint the public with this illness. Continued public education is essential so that parents and physicians can learn to recognize the symptoms of Reye's Syndrome and initiate treatment in its earliest stages.

To enhance public awareness of the gravity of Reye's Syndrome, the Congress, by Senate Joint Resolution 259, has designated the week of November 12, 1984, through November 18, 1984, as "National Reye's Syndrome Week" and authorized and requested the President to issue a proclamation in observance of that week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of November 12, 1984, through November 18, 1984, as National Reye's Syndrome Week, and I call upon the people of the United States to observe that week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of November, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 84-29162
Filed 11-1-84; 3:59 pm]
Billing code 3195-01-M

Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 601]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona navel oranges that may be shipped to market during the period November 2–8, 1984. Such action is needed to provide for the orderly marketing of fresh navel oranges during this period due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: November 2, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, 202–447–5975.

SUPPLEMENTARY INFORMATION:

Findings

This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Acting Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This regulation is issued under the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation of and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the provisions of 7 CFR 907.60 and 907.113 (Early Maturity Allotments). Early maturity allotments were recommended by the committee following discussion at its meeting on October 30, 1984. The committee met to consider the current and prospective conditions of supply and demand and recommended a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports the demand for navel oranges is uncertain.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared policy of the Act to make this regulatory provision effective as specified, and handlers have been apprised of such provision and its effective date.

List of Subjects in 7 CFR Part 907

Marketing agreements and orders, California, Arizona, Oranges (navel).

PART 907—[AMENDED]

§ 907.901 is added as follows:

§ 907.901 Navel Orange Regulation 601.

The quantities of navel oranges grown in California and Arizona which may be handled during the period November 2 through November 8, 1984, are established as follows:

(a) District 1: 1,143,676 cartons;

(b) District 2: Unlimited cartons;

(c) District 3: 56,324 cartons;

(d) District 4: Unlimited cartons.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: November 1, 1984.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84–29181 Filed 11–2–84; 8:45 am]

BILLING CODE: 3410–02–M

7 CFR Part 928

Papayas Grown in Hawaii; District Redefinition and Committee Reapportionment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule redefines the districts into which the production area is divided, and reapportions the membership of the Papaya Administrative Committee. The rule recognizes recent shifts in papaya production within the production area, and is necessary to assure equitable representation of grower members on the committee based on the relative amounts of papayas produced.

DATES: Effective date: November 5, 1984. Comments due: December 5, 1984.

ADDRESS: Send two copies of comments to the Hearing Clerk, U.S. Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Acting Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This rule is issued under the marketing agreement and Order No. 928 (7 CFR Part 928), regulating the handling of papayas grown in Hawaii. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The marketing order provides that the committee may, with the approval of the Secretary, redefine the districts into

which the production area is divided and/or reapportion the committee membership when conditions warrant. Such action shall reflect, insofar as practicable, shifts of papaya production within the districts and the production area.

The marketing order currently provides for a committee consisting of 13 members. Each member has an alternate. Ten of the members are growers and three are handlers. Grower members are allocated among the 4 districts comprising the production area (the State of Hawaii) as follows: Seven grower members represent District 1 (the island of Hawaii), one member represents District 2 (the counties of Maui and Kalawao), one member represents District 3 (the county of Kauai), and one member represents District 4 (the county of Honolulu).

This rule combines Districts 2 and 3 to form a new district to be designated as District 2, and provides that new District 2 shall be represented by two grower members, with the stipulation that at least one alternate member shall be from either Maui or Kalawao County. Under the change, current District 4 would be redesignated as District 3.

The change in production districts and grower representation was unanimously recommended by the committee established under the marketing order. The committee reports that production in Maui and Kalawao now accounts for less than one percent of the papaya production in Hawaii, while production in Kauai has increased to about 20 percent of total production. The committee believes that this action will promote the equitable allocation of grower representation on the committee. The term of office of current members of the committee expires December 31, 1984. Nomination meetings to select nominees for the term beginning January 1, 1985, are scheduled to be held in early November 1984. Changes in the basis of committee representation, as specified herein, should be in place prior to the scheduled nomination meetings to allow the committee to be nominated and selected consistent with changed papaya production patterns.

Accordingly, the Secretary finds that upon good cause shown it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in other public procedures, and postpone the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between October 12, 1984, the date when information became available upon which this rule is based, and the effective date necessary to effectuate the declared policy of the act. This rule should become effective prior to the November grower nomination meetings, so that the nominations may be conducted on the basis of the reapportioned committtee and redefined districts, and the next committee which is selected will reflect current production patterns. This rule provides a 30-day comment period. All comments received will be considered prior to finalization of this rule. It is found that this rule will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 928

Marketing agreement and orders, Papayas, Hawaii.

PART 928—[AMENDED]

Therefore, new §§ 928.111 and 928.120 are added to read as follows:

§ 928.111 District redefinition.

"District" means the applicable one of the following described subdivisions of the production area:

(a) District 1 shall include the island of Hawaii.

(b) District 2 shall include the county of Kauai which consists of the islands of Kauai and Niihau; the county of Maui which consists of the islands of Maui, Molakai, Lanai, and Kahoolawe; and Kalawao County.

(c) District 3 shall include the county of Honolulu which includes all of the island of Oahu.

§ 928.120 Committee reapportionment.

Grower members of the committee shall be as follows:

(a) Seven grower members and their alternates shall be producers of papayas in District 1.

(b) Two grower members and their alternates shall be producers of papayas in District 2: *Provided*, that at least one alternate grower member shall be a producer of papayas in either Maui or Kalawao County.

(c) One grower member and alternate shall be producers of papayas in District 3.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: October 31, 1984.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84–29086 Filed 11–2–84; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rules for Using Energy Costs and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act; Ranges of Comparability for Water Heaters

AGENCY: Federal Trade Commission.

ACTION: Rule-related notice.

SUMMARY: Under the Federal Trade Commission's Appliance Labeling Rule, each required label or fact sheet for a covered appliance must show a range, or scale, indicating the range of energy costs or efficiencies for all models of a size or capacity comparable to the labeled model. These ranges show the highest and lowest energy costs or efficiencies for the various size or capacity groupings of the appliances covered by the rule. The Commission publishes the ranges annually in the **Federal Register** if the upper or lower limits of the range change by 15 percent or more from the previously published range. If the Commission does not publish a revised range, it must publish a notice that the prior range is still applicable for the next year.

The ranges of efficiencies for water heaters have not changed by as much as 15 percent since the last publication. Therefore, the ranges published on September 12, 1983 and December 16, 1983 remain in effect until new ranges are published.

EFFECTIVE DATE: November 5, 1984.

FOR FURTHER INFORMATION CONTACT: James Mills or Lucerne D. Winfrey, Attorneys, Division of Enforcement, Federal Trade Commission, Washington, D.C. 20580, (202) 376–8934.

SUPPLEMENTARY INFORMATION: Section 324 of the Energy Policy and Conservation Act of 1975 (EPCA) [1] required the Federal Trade Commission to consider labeling rules for the disclosure of estimated annual energy cost or alternative energy consumption information for at least thirteen categories of appliances: (1) Refrigerators and refrigerator-freezers; (2) freezers; (3) dishwashers; (4) clothes dryers; (5) water heaters; (6) room air conditioners; (7) home heating equipment, not including furnaces; (8) television sets; (9) kitchen ranges and ovens; (10) clothes washers; (11) humidifiers and dehumidifiers; (12) central air conditioners; and (13) furnaces. Under the statute, the

[1] Pub. L. 94–163, 89 Stat. 871, 42 U.S.C. 6201 (1975).

Department of Energy (DOE) is responsible for developing test procedures that measure how much energy the appliances use. In addition, DOE is required to determine the representative average cost a consumer pays for the different types of energy available.

On November 19, 1979, the Commission issued a final rule [2] covering seven of the thirteen appliance categories: Refrigerators and refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners and furnaces.

The rule requires that energy efficiency ratings or energy costs and related information be disclosed on labels, fact sheets and in retail sales catalogs for all covered products manufactured on or after May 19, 1980. Certain point-of-sale promotional materials must disclose the availability of energy cost or energy efficiency rating information. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of the DOE test procedures.

Pursuant to § 305.8 of the rule, manufacturers submitted reports to the Commission by January 21, 1980. These reports contained the estimated annual cost or energy efficiency rating, derived from tests performed pursuant to the DOE test procedures, for all models of the seven categories of appliances. The reports also contained the model, the number of tests performed on each model, and the capacity of each model. From the information, the Commission compiled and published [3] ranges of comparability for each product, as required by § 305.10 of the rule.

Section 305.8(b) of the rule requires that manufacturers, after filing this initial report, shall report the same information annually by specified dates for each product type.[4] If an analysis of the new data indicates that the upper or lower limits of any of the ranges have changed by more than 15%, the Commission must, under § 305.10 of the rule, publish a revised version of the new range or ranges. Otherwise, the Commission must publish a statement that the prior range or ranges remain in effect for the next year.

The annual reports for water heaters have been received and analyzed and it has been determined that neither the upper nor lower limits of the ranges for this product category have changed by 15% or more since the last publication of the ranges on September 12, 1983 and December 16, 1983.

In consideration of the foregoing, the present ranges for water heaters will remain in effect for the next year.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Authority: Sec. 324 of the Energy Policy and Conservation Act (Pub. L. 94–163) (1975), as amended by the National Energy Conservation Policy Act (Pub. L. 95–619) (1978), 42 U.S.C. 6294; sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 84-29015 Filed 11-2-84; 8:45 am]

BILLING CODE 6750-01-M

[2] 44 FR 66466, 16 CFR Part 305 (November 19, 1979).

[3] 45 FR 13998 (March 3, 1980), 45 FR 19520 (March 25, 1980), 45 FR 26036 (April 17, 1980), 46 FR 3829 (January 16, 1981).

[4] Reports for clothes washers are due by March 1; reports for water heaters, room air conditioners and furnaces are due by May 1; reports for dishwashers are due by June 1; reports for refrigerators, refrigerator-freezers and freezers are due by August 1.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76-217 (Virginia-3); Order No. 404]

High-Cost Gas Produced From Tight Formations; Virginia

Issued: November 1, 1984

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703) (1983)). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. On September 28, 1983, the Commonwealth of Virginia, Department of Labor and Industry, Division of Mines and Quarries (Virginia), submitted to the Commission a recommendation that the "Ravencliff" sand, "Maxon" sands, and "Injun-Weir" sands underlying Dickerson and Buchanan Counties and portions of Lee, Scott, Wise, Russell, and Tazewell Counties, Virginia, be designated as a tight formation in the Commission's regulations. This final order adopts the recommendation of Virginia that the "Maxon" sands and "Injun-Weir" sands portion of the proposal located in Dickenson and Buchanan Counties and portions of Lee, Scott, Wise, Russell, and Tazewell Counties, Virginia, be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective December 3, 1984.

FOR FURTHER INFORMATION CONTACT: Edward G. Gingold, (202) 357–5491 or Walter W. Lawson, (202) 357–8556.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A. G. Sousa, Oliver G. Richard III and Charles G. Stalon.

The Commission hereby amends § 271.703(d) of its regulations (18 CFR 271.703(d) (1983)) to include the "Maxon" sands of the Mauch Chunck Group and "Injun-Weir" sands of the Pocono Group as a designated tight formation eligible for incentive pricing under § 271.703. The amendment was proposed in a Notice of Proposed Rulemaking by the Director, Office of Pipeline and Producer Regulation, issued February 10, 1984 (49 FR 5772, February 15, 1984 [1] based on a recommendation by the Commonwealth of Virginia, Department of Labor and Industry, Division of Mines and Quarries (Virginia) in accordance with § 271.703, that a portion of the "Maxon" sands and "Injun-Weir" sands underlying Dickenson and Buchanan Counties and portions of Lee, Scott, Wise, Russell, and Tazewell Counties, Virginia, be designated as a tight formation.

The "Ravencliff" sand portion of the proposal is being held in abeyance at Virginia's request pending submission of additional supporting data. The further data should clarify the deficiencies noted by Commission staff in the "Ravencliff" sand portion of the recommendation. Nevertheless, acceding to Virginia's request, the Commission will not further delay approval of the "Maxon" sands and

[1] Comments on the proposed rule were invited and none were received. No party requested a public hearing and no hearing was held.

"Injun-Weir" sands portion of the recommendation.

Evidence submitted by Virginia supports the assertion that the "Maxon" sands and "Injun-Weir" sands portion of its recommendation underlying Dickenson and Buchanan Counties and portions of Lee, Scott, Wise, Russell, and Tazewell Counties, Virginia, meet the guidelines contained in § 271.703(c)(2). The Commission adopts Virginia's recommendation.

This amendment shall become effective December 3, 1984.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Code of Federal Regulations, is amended as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—[AMENDED]

1. The authority citation for Part 271 reads as follows:

(Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Administrative Procedure Act, 5. U.S.C. 553)

2. Section 271.703 is amended by adding paragraph (d)(181) to read as follows:

§ 271.703 Tight formation.

* * * * *

(d) *Designated tight formations.* * * *

(181) *"Maxon" sands of the Mauch Chunck Group and the "Injun-Weir" sands of the Pocono Group in Virginia.* RM79–76–217 (Virginia –3)

(i) *Delineation of formation.* The "Maxon" sands and the "Injun-Weir" sands underlie all of Dickenson and Buchanan Counties and portions of Lee, Scott, Wise, Russell, and Tazewell Counties, Virginia.

(ii) *Depth.* The average depth to the top of the "Maxon" sands ranges from 2,610 feet in the eastern portion to 2,930 feet in the western portion of the designated area. The average depth to the top of the "Injun-Weir" sands ranges from 3,855 feet in the eastern portion to 4,040 feet in the western portion of the designated area.

[FR Doc. 84-29072 Filed 11-2-84; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. AFT-187; Ref: Notice No. 418]

Alexander Valley Viticultural Area

Correction

In FR Doc. 84-27837, beginning on page 42719, in the issue of Wednesday, October 24, 1984, make the following correction:

§ 9.53 [Corrected]

On page 42724, in the second column, in § 9.53(c)(5), line one, "12,200" should read "13,200".

BILLING CODE 1505-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

Approval of Supplements to the New Mexico State Plan

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule; approval of developmental steps.

SUMMARY: This notice approves various supplements to the approved New Mexico Occupational Health and Safety State plan. These supplements, which represent completion of several of the State's developmental steps, concern: legislative amendments to the New Mexico Occupational Health and Safety Act; a revised plan narrative document; regulations for inspections, citations, and proposed penalties; regulations for recording and reporting occupational injuries and illnesses; regulations for variances; regulations for on-site consultation; rules of procedures for the New Mexico Occupational Health and Safety Review Commission; procedures for enforcing employee nondiscrimination provisions; Field Operations and Industrial Hygiene manuals; and a revised occupational safety and health poster.

EFFECTIVE DATE: October 30, 1984.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N3637, U.S. Department of Labor, Washington, D.C. (202) 523-8148.

SUPPLEMENTARY INFORMATION:

Background

Part 1953 of Title 29, Code of Federal Regulations, provides procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter called the Act) for review of changes and progress in the development and implementation of State plans which have been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. The New Mexico State plan was approved by the Assistant Secretary for Occupational Safety and Health (hereinafter called the Assistant Secretary) as a developmental plan on December 4, 1975. On December 10, 1975, a notice was published in the **Federal Register** (40 FR 57455) containing the approval decision, description of the plan, and schedule of the State's major developmental commitments. By letters dated August 18, 1976; October 1, 1976; December 20, 1976; December 20, 1977; February 19, 1979; March 7, 1979; February 28, 1980; May 16, 1980; December 5, 1980; April 14, 1981; May 10, 1981; June 1, 1981; April 6, 1982; March 29, 1983; May 11, 1983; June 3, 1983; June 8, 1983; June 15, 1983; June 21, 1983; June 27, 1983; July 18, 1983; October 17, 1983; October 21, 1983; October 26, 1983; January 11, 1984; April 4, 1984, and July 24, 1984 to OSHA's Regional Administrator for Region VI, the State of New Mexico submitted State-initiated and developmental plan change supplements addressing the completion of several of the developmental steps set forth in the initial approval decision. Following Regional review, the supplements were forwarded to the Assistant Secretary for determination as to whether they should be approved. The supplements are described below.

Description of the Supplements

1. *New Mexico Legislative Amendments [New Mexico Occupational Health and Safety Act of 1978 (section 50-9-1 et seq. NMSA 1978 as amended in 1983 and 1984)].* One of the developmental commitments given by New Mexico prior to plan approval was that a legislative amendment would be enacted to remove the dual 15 day contest period. In accordance with the developmental step set forth in 29 CFR 1952.363(e), on December 20, 1977, the State submitted a plan change consisting of alternative actions which eliminated the need for legislative corrective action. Subsequently, by letter dated June 8, 1983, the State submitted an amendment to its field operations manual which updated and clarified the alternative actions. (See

further discussion under "Regulations for Inspections, Citations, and Proposed Penalties.")

In 1978 an amendment was enacted to section 50-9-24 adding a new subsection (c), governing the imposition of penalties for serious violations by governmental entities. The amendment requires that penalties be proposed for such serious violations, but provides that such penalty "shall be deemed paid without further action of the State, political subdivision or agency," if the violation is abated within the abatement period. This amendment was submitted by the State on February 28, 1980. In August 1982, the New Mexico Supreme Court ruled that the New Mexico Occupational Health and Safety Act did not allow for private interviewing of employees by the Environmental Improvement Division (EID) at the worksite. As a result of this ruling, in 1983, an amendment to section 50-9-10A(2) was enacted which specifically authorizes the private questioning of employees and employers by EID officials at the worksite. Also, in 1983, an amendment to section 50-9-22C was enacted which specified that the New Mexico Occupational Health and Safety Bureau of the Environmental Improvement Division rather than the State Mine Inspector would have jurisdiction in those places of employment subject to the jurisdiction of the U.S. Department of Labor under the Federal Occupational Safety and Health Act of 1970. This amendment resolved a longstanding issue between the Environmental Improvement Division and the State Mine Inspector regarding the jurisdiction over working conditions in copper smelters. These enacted amendments were submitted by the State on July 18, 1983. On April 4, 1984, as the result of Federal OSHA's objection to an additional 1983 legislative amendment which prohibited the use of interview statements as evidence in any civil or enforcement actions, the State submitted an enacted amendment to section 50-9-21B which removed that restriction.

Also, on April 4, 1984, the State submitted an enacted amendment to section 50-9-12. Subsection 50-9-12E requires that emergency temporary standards promulgated by the State in response to those issued under the Occupational Safety and Health Act of 1970 shall be enforceable to the same extent. Subsection 50-9-12F requires that where a Federal emergency temporary standard (ETS) is made permanent the State ETS shall remain in effect an additional 120 days after promulgation of the superseding Federal permanent standard.

2. *Management Information System.* In accordance with the requirement of the developmental step set forth in 29 CFR 1952.363(a), the State was to develop and implement a management information system by January 1, 1976. By letter dated August 18, 1976, the State submitted a plan supplement indicating that its management information system was fully operational. Also, by letter dated June 3, 1983, New Mexico amended its plan to indicate its participation in OSHA's unified Federal/State management information system.

3. *Review Commission Rules of Procedures.* In accordance with the requirement of the developmental step set forth in 29 CFR 1952.363(c), the State was to promulgate review commission rules of procedures by January 31, 1976. On October 1, 1976, New Mexico submitted its occupational health and safety review commission rules of procedures for administrative review. On February 25, 1977, a notice was published in the **Federal Register** (42 FR 11025) inviting public comment on the plan supplement. No public comments were received. In response to Federal review, the State on February 15, 1978; May 16, 1978; March 7, 1979; February 7, 1980; December 8, 1980; January 20, 1981; May 27, 1981; January 14 and 28, 1982; April 30, 1982; June 22, 1983; August 8, 1983; and November 9, 1983, submitted various revisions, amendments, and clarifications to its revised review commission procedures. On December 16, 1983, the State repromulgated its review commission rules of procedures. By letter dated January 11, 1984, the State submitted its revised review commission rules of procedures which became effective on January 1, 1984, and parallel 29 CFR Part 2200.

4. *Enforcement Program.* In accordance with the requirement of the developmental step set forth in 29 CFR 1952.363(d), New Mexico's enforcement program was to achieve operational status by December 1, 1976. By letter dated December 20, 1977, the State submitted a plan supplement attesting to its enforcement program being operational as of June, 1976.

5. *Public Employee Program.* In accordance with the requirement of the developmental step set forth in 29 CFR 1952.363(f), the State's public employee program was to become operational by July 1, 1977. By letter dated December 20, 1977, the State submitted a plan supplement involving its public employee program being operational since June, 1976. On February 28, 1980, the State submitted an amendment to its plan narrative regarding the imposition of penalties for serious violations by governmental entities. (See discussion under "Legislative Amendments").

6. *Regulations for Recording and Reporting Occupational Injuries and Illnesses (Regulation 101-1904).* On August 8, 1975, prior to plan approval, the State adopted regulations for recording and reporting occupational injuries and illnesses. On October 10, 1978, the State repromulgated new regulations (covering both private and public sectors) that paralleled the Federal 29 CFR Part 1904. Upon review by OSHA, it was determined that the regulations included unacceptable provisions for the annual summary, worker access to records, and duties of employers. On February 19, 1979, the State repromulgated its regulations which corrected the deficiencies and included other modifications to reflect Federal changes. In addition, on June 1, 1981 and on October 26, 1983, the State submitted amendments to its regulations to reflect Federal changes.

7. *Regulations for Inspections, Citations, and Proposed Penalties [NM Regulations 102; 105; 106 (. 1 through .18); 107 and 108).* On August 8, 1975, prior to plan approval, the State adopted regulations for inspections, citations and proposed penalties. On March 7, 1979; December 21, 1979; January 2, 1980; and April 14, 1981, the State submitted repromulgated regulations. The April 14th submission became effective on April 10, 1981. On June 1, 1981, the State submitted amendments which became effective on May 10, 1981. Upon review by OSHA, a number of problems were identified. Those problems dealt with: the State's authority to seek ex parte and preinspection warrants; the State's ability to privately question employees; omission of provisions addressing employer and employee representatives accompaniment during inspection; "trade secret" definition; employee complaint confidentiality; and interim steps taken to safeguard employees during petition for modification of abatement (PMA's) periods. In addition, OSHA expressed concern because of a lack of timeframes in the State's informal administrative review process which is part of the State's unique two-tier contest procedure.

By letters dated December 5, 1980, and April 6, 1982, the State submitted responses asserting its ability to obtain both preinspection and ex parte warrants. On October 21, 1983, the State submitted an amended regulation 106.1 which was implemented to protect the

rights of employers and employees during private questioning. Further, on April 4, 1984, in response to OSHA's concern, the State submitted an assurance that a compliance officer's failure to comply with the four elements, i.e., right to private interview, right to counsel, written statement, and signed statement, delineated in regulation 106.1 will not jeopardize the confidentiality of the interview statements. Also, the State submitted amendments to its regulation 106 providing for consultations with employees during inspection; confidentiality for employees referred to in a complaint; and requiring the employer to list interim steps to safeguard employees against cited hazards during PMA's. These amendments became effective on April 26, 1981. An amendment dated May 10, 1981, defines "trade secret."

By letters dated May 27, 1981, and June 8, 1983, the State addressed the timeframe for conducting informal administrative reviews and clarifying the two-tier contest procedure as follow: An employer has 15 working days from receipt of the citation or notice of proposed penalty to file a notice of contest. Upon receipt of a notice of contest, the Environmental Improvement Division shall promptly (within 30 days) schedule an informal administrative review. Within 10 days of the informal administrative review, the reviewing officer shall notify the contesting party of the decision by issuing a summary and/or settlement agreement. (In rare cases where the State cannot complete the review within 10 days, an outside limit of 30 days has been established for issuance of the summary and/or settlement agreement.) If the contested matters are not successfully resolved at the informal administrative review, the contesting party has 15 working days from receipt of the summary to request a formal hearing before the Review Commission. All notices of contest are immediately docketed with the Review Commission. Where settlement is not reached at the informal review stage, the division must file a summary of administrative review with the Review Commission no later than 90 days after docketing. Finally, by letters dated May 11, 1983 and June 14, 1983, the State submitted amendments to its regulations for failure to correct a violation for which a citation has been issued and petition for modification of abatement periods.

8. *Petitions for Variances from Job Safety and Health Regulations (NM Regulation 103).* On August 8, 1975, prior to plan approval, the State adopted regulations for rules of practice for variances, limitations, variations, tolerances and exemptions. On March 7, 1979, December 21, 1979, January 2, 1980, and April 14, 1981, the State submitted repromulgated regulations. The April 14th submission became effective on April 10, 1981. Upon review by OSHA, a number of problems were identified. By letters dated June 18, 1981, and May 11, 1983, the State submitted Field Operations Manual amendments and assurances which included provisions for employer posting of application; publication of application; public comment period; hearing (upon request); investigation and decision; and mandatory hearing for modification/revocation of a variance.

9. *Regulations for On-Site Consultation (NM Regulation 104).* On March 7, 1979, and June 1, 1981, the State submitted promulgated regulations providing for on-site consultation to employers upon request. Under its plan, New Mexico provides on-site consultation services to both private and public sector employers. After review by OSHA, the State on October 17, 1983, amended the rules to: ensure that enforcement personnel are not used to perform consultation visits; provide that where an employer does not immediately abate an imminent danger situation it will be referred to enforcement; and allow for opening and closing conferences. Further review by OSHA revealed that although the State's field operations manual satisfactorily addressed the correction and referral of serious hazards, the State's regulation 104 lacked such a provision. By letters dated April 4, 1984, and July 10, 1984, the State submitted assurances that regulation 104 will be amended to include referral of uncorrected serious violations.

10. *Discrimination Provisions.* On March 29, 1983, the State submitted revised provisions dealing with employee discrimination. The discrimination procedures include provisions for (1) filing of a written complaint within 30 days; (2) notification to the complainant and employer, within 60 days of complaint receipt, of the director's determination; and (3) ability of the director to initiate compensatory actions, including backpay and reinstatement of the employee. On June 15, 1983, the State submitted an amendment to its discrimination procedures. The amendment provides that the State will accept oral discrimination complaints on the 30th day with written confirmation later. The State's discrimination provisions are equivalent to 29 CFR Part 1977.

11. *Compliance Manuals.* By letter dated May 16, 1980, the State of New Mexico submitted a supplement to its plan containing the State's field operations manual. As a result of Federal OSHA's review and subsequent Federal policy changes the State submitted amendments to its 1980 FOM concerning: discrimination (dated March 4, 1983; May 23, 1983; June 27, 1983; and August 10, 1983); petition for modification of abatement date (dated June 17, 1983); complaints (dated June 17, 1983; referrals (dated June 17, 1983); pre-inspection warrants (dated June 16, 1983); informal administrative review (dated June 8, 1983); general duty clause violations (dated June 17, 1983); multiemployer citation policy (dated June 20, 1983); and variances (dated May 1, 1983). The State's 1980 field operations manual together with the subsequent amendments reflect the Federal field operations manual guidelines in effect in 1980 and subsequent changes through March 1983. By letter dated July 25, 1980, the State formally notified OSHA that it has adopted the revised 1979 Federal Industrial Hygiene Field Operations Manual (IHFOM) for use by its industrial hygiene staff. In addition, on July 24, 1984, the State submitted a cover chapter to its IHFOM which documents adoption and provides for conversion of Federal reference language to State reference language.

12. *Plan Narrative.* New Mexico on February 28, 1980, submitted a supplement containing a revised plan narrative. The State plan narrative updated the State's plan to reflect the 1978 State government reorganization, division reorganization, imposition of penalties for serious violations by governmental entities; and the recompilation of the New Mexico statutes. The personnel operations of the New Mexico Environmental Improvement Division and the servicing merit system were reviewed by the Civil Service Commission and were found to be acceptable. The State also has an Affirmative Action Plan. Subsequently, the State submitted amendments concerning its organizational charts (dated June 16, 1983 and June 27, 1983); removal of Radiation Health Protection Act from its State Program, inserting new position descriptions which delete references to the radiation health activity, Radiation Protection Bureau and Bureau chief (dated June 21, 1983); and its coverage of working conditions in copper smelters (dated April 4, 1984). The State's plan narrative addresses its budget and current staffing allocation of 7 safety and 3 health compliance

officers. Further, by letter dated July 24, 1984, the State submitted an amendment to its plan narrative which describes its internal (staff) and external (employer/employee) training programs.

13. *State Poster.* The New Mexico State poster was approved on July 13, 1976 [41 FR 28708]. New Mexico on May 10, 1983, submitted a revised poster which reflects the imposition of penalties for serious violations in governmental entities. On April 4, 1984, as a result of Federal OSHA's review, the State submitted an assurance that its poster will be amended, at the next printing, to include a provision to address the correction and referral of serious hazards during on-site consultation.

Location of the Plan and Its Supplements for Inspection and Copying

A copy of the State's plan and the supplements are available for inspection and copying during normal business hours at the following locations:

Office of the Director of Federal Compliance and State Programs, Occupational Safety and Health Administration, Room N3700, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210

Office of the Regional Administrator, Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, Room 602, 555 Griffin Square Building, Dallas, Texas 75202

Environmental Improvement Division, Crown Building, 725 St. Michael's Drive, Santa Fe, New Mexico 87503

Public Participation

Under 29 CFR 1953.2(c) of this chapter, the Assistant Secretary for Occupational Safety and Health may prescribe alternative procedures to expedite the review process or for any good cause which may be consistent with applicable law. The Assistant Secretary finds that the New Mexico plan supplements were adopted in accordance with procedural requirements of State law and are consistent with commitments made in the approved plan. Accordingly, it is found that further public participation would be unnecessary.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

Decision

PART 1952—APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

After careful consideration, the New Mexico plan supplements outlined above are approved under Part 1953. This decision incorporates the requirements of the Act and implementing regulations applicable to State plans generally. In addition, 29 CFR 1952.364 is amended to reflect the completion of developmental steps by adding a revised paragraph (a) and new paragraphs (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m) to the list of completed developmental steps. As revised, § 1952.364 reads as follows:

§ 1952.364 Completed developmental steps.

(a) In accordance with the requirements of § 1952.10, the New Mexico State poster was approved by the Assistant Secretary on July 2, 1976. A revised State poster reflecting legislative amendments and procedural changes was submitted on May 10, 1983, and approved by the Assistant Secretary on October 30, 1984.

(b) In accordance with the intent of 29 CFR 1952.363(e), on December 20, 1977, and June 3, 1983, New Mexico submitted procedural guidelines for its two-tier contested case procedures in lieu of legislative amendments. The procedures establish maximum timeframes for completion of the first level, informal administrative review of contested cases, and immediate docketing of cases with the New Mexico Occupational Health and Safety Review Commission. A second 15 day contest period is provided for employer/employee appeal directly to the Review Commission. The New Mexico Occupational Health and Safety Act (section 50–9–1 et seq., NMSA 1978) was amended in 1978, 1983 and 1984. These amendments deal with the imposition of penalties for serious violations by governmental entities; the private questioning of employees and employers by the Environmental Improvement Division officials at the worksite; the jurisdiction of the Environmental Improvement Division over working conditions in copper smelters; the use of interview statements as evidence in a civil or enforcement action; and the State's adoption of emergency temporary standards. These clarifications and legislative amendments were approved by the Assistant Secretary on October 30, 1984.

(c) In accordance with 29 CFR 1952.363(a), New Mexico submitted documentation on establishment of its Management Information System on August 18, 1976, and June 3, 1983. The June 3, 1983, amendment specifies New Mexico's participation in OSHA's Unified Management Information System. These supplements were approved by the Assistant Secretary on October 30, 1984.

(d) In accordance with 29 CFR 1952.363(c), New Mexico promulgated Review Commission Rules of Procedures on October 1, 1976. On January 11, 1984, New Mexico submitted revised Review Commission Rules of Procedures which parallel 29 CFR Part 2200. The revised rules were approved by the Assistant Secretary on October 30, 1984.

(e) In accordance with 29 CFR 1952.363(d), New Mexico submitted documentation on December 20, 1977, showing that its enforcement program was operational effective June, 1976. The supplement was approved by the Assistant Secretary on October 30, 1984.

(f) In accordance with 29 CFR 1952.363(f), New Mexico by letter dated December 20, 1977, submitted a plan supplement regarding its development of an occupational health and safety program for public employees in June, 1976. A revision thereto was submitted on February 28, 1980. These supplements were approved by the Assistant Secretary on October 30, 1984.

(g) New Mexico regulations for recording and reporting occupational injuries and illnesses parallel to 29 CFR Part 1904 which were originally promulgated on August 8, 1975, were revised on February 19, 1979, June 1, 1981, and October 26, 1983. The revised regulations were approved by the Assistant Secretary on October 30, 1984.

(h) New Mexico regulations for inspections, citations and proposed penalties parallel to 29 CFR Part 1903 originally promulgated on August 8, 1975, were revised on April 14, 1981; May 10, 1981; May 27, 1981; June 1, 1981; April 6, 1982; May 11, 1983; June 8, 1983; June 14, 1983; and April 4, 1984. The revised regulations were approved by the Assistant Secretary on October 30, 1984.

(i) New Mexico rules of practice for variances, limitations, variations, tolerances and exemptions parallel to 29 CFR Part 1905 which were originally promulgated on August 8, 1975, were revised on April 14, 1981. Subsequently, on June 18, 1981, and May 11, 1983, the State submitted amendments and assurances to its Field Operations Manual. These supplements were approved by the Assistant Secretary on October 30, 1984.

(j) New Mexico promulgated regulations for on-site consultation on

March 7, 1979 and June 1, 1981 with an amendment dated October 17, 1983 and assurances dated April 4, 1984 and July 10, 1984. These supplements were approved by the Assistant Secretary on October 30, 1984.

(k) New Mexico adopted discrimination provisions parallel to 29 CFR Part 1977 on March 29, 1982, with an amendment dated June 15, 1983. These supplements were approved by the Assistant Secretary on October 30, 1984.

(l) New Mexico submitted its field operations manual on May 16, 1980, with subsequent amendments dated March 4, 1983; May 11, 1983; May 23, 1983; June 8, 1983; June 16, 1983; June 17, 1983; and June 27, 1983. The manual reflects changes in the Federal program through March 1983. On July 25, 1980, with a subsequent amendment dated July 24, 1984, the State adopted Federal OSHA's Industrial Hygiene Manual. These supplements were approved by the Assistant Secretary on October 30, 1984.

(m) New Mexico on February 28, 1980, submitted a supplement containing a revised plan narrative with further revisions dated June 16, 1983; June 21, 1983; June 27, 1983, April 4, 1984, and July 24, 1984. These supplements were approved by the Assistant Secretary on October 30, 1984.

(Sec. 18, Pub. L. 91-595, 84 Stat. 1608 (29 U.S.C. 667))

Signed in Washington, D.C. this 30th day of October, 1984.

Robert A. Rowland,

Assistant Secretary.

[FR Doc. 84-28988 Filed 11-1-84; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 915

Extension of Deadline for Satisfaction of a Condition of Approval of the Iowa Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the Secretary of the Interior's decision to extend the deadline for Iowa to meet a condition of approval of its State permanent regulatory program under the Surface Mining and Reclamation Act of 1977 (SMCRA). The condition concerns the prepayment of civil penalties.

EFFECTIVE DATE: November 5, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Rieke, Field Office Director, Kansas City Field Office, Office of Surface Mining, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106; Telephone: (816) 374-5527.

SUPPLEMENTARY INFORMATION:

Background on the Iowa Program

The Iowa program was conditionally approved by the Secretary of the Interior on January 21, 1981 (45 FR 5885). The approval was made effective April 10, 1981. Information pertinent to the general background, revisions, modifications, and amendments to the Iowa program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Iowa program can be found in the January 21, 1981 **Federal Register.**

Under 30 CFR 732.13(j), the Secretary may conditionally approve a State permanent regulatory program which contains minor deficiencies where the deficiencies are of such a size and nature as to render no part of the program incomplete, the State is actively proceeding with steps to correct the deficiencies, and the State agrees to correct the deficiencies according to a schedule set in the notice of conditional approval. The schedule is established in consultation with the State based on the time required for changes to be adopted under State procedures or legislative schedules.

In accepting the Secretary's conditional approval, Iowa agreed to satisfy original conditions (a) and (c) by July 1, 1981 and condition (b) by January 1, 1982. Original conditions (a), (b) and (c) have been removed (47 FR 22950, May 26, 1982, and 47 FR 39482, September 7, 1982). On November 9, 1983, OSM announced the Secretary's decision to impose a new condition of approval on the Iowa program (48 FR 51457).

Background on the Condition

When Iowa's program was conditionally approved by the Secretary of the Interior on January 21, 1981, it did not include a prepayment requirement comparable to that contained in section 518(c) of SMCRA and 30 CFR 845.19. At the time of issuance of the conditional approval of Iowa's permanent program, the Secretary was enjoined on constitutional grounds by the U.S. District Court for the Southern District of Iowa from requiring the State to include in its program a provision comparable to the prepayment requirement in section 518(c) of SMCRA. *Star Coal Co.* v. *Andrus*, 14 ERC 1325 (1980). The issue of the constitutionality of section 518(c) was also pending before the U.S. Supreme Court in two cases. Because of the court cases pending at the time of his decision, the Secretary did not condition his approval of Iowa's program upon correction of the absence of an escrow requirement in the civil penalty provisions.

However, the decision notice on Iowa's program (Finding 4h(c)), stipulated that should the Supreme Court rule that the prepayment requirement of section 518(c) was constitutional, the Secretary would then take steps to require Iowa to comply with the requirements relating to prepayment of civil penalties.

In both of the cases before the Supreme Court, the issue of the constitutionality of section 518(c) was pretermitted on the ground that the issue was not ripe for the court to decide. *See Hodel* v. *Virginia Surface Mining and Reclamation Association*, 452 U.S. 264, 16 ERC 1027 (1981); *Hodel* v. *Indiana*, 452 U.S. 314, 16 ERC 1048 (1981). Although the Supreme Court did not rule on the constitutionality of section 518(c), the decisions in the *Hodel* and *Star Coal* cases removed the legal restraints on the Secretary's statutory obligation to require Iowa to comply with the prepayment provisions of SMCRA and existing regulations.

Therefore, on January 14, 1982, OSM notified the Iowa Department of Soil and Conservation (DSC) that an amendment to Iowa's program was needed because the cases in which the constitutionality of SMCRA's prepayment provision was challenged had been decided and the injunction against the Secretary in the case of *Star Coal* had been lifted.

In the January 14, 1982 letter, OSM noted that it was considering modifying the Federal penalty prepayment requirement because of its concern that rigid adherence to the rule, in certain circumstances, might violate the constitutional guarantee of due process. However, on May 25, 1982, OSM notified the State that no modification to the Federal prepayment rule was anticipated in the near future and set a deadline of June 30, 1983, for the State to amend its program. On August 16, 1982, OSM promulgated final rules modifying the inspection, enforcement and civil penalty provisions of the permanent regulatory program. OSM made no change to the prepayment requirement.

On March 18, 1983, the Iowa Deputy Attorney General, on behalf of the DSC, informally submitted to OSM for review three alternative bills which would amend the Iowa statute concerning civil penalty assessment. On May 25, 1983,

the DSC requested a one-year extension of the June 30, 1983, deadline because the legislative session had ended and no action had been taken on any of the three alternatives. The DSC noted that a one-year extension was necessary because the Iowa General Assembly would not convene again until January 1984.

OSM notified Iowa, on August 2, 1983, that the Secretary would propose adding a new condition to the Iowa program requiring the State to amend its program by June 30, 1984, to incorporate requirements consistent with section 518(c) of SMCRA and 30 CFR 845.19. On November 9, 1983, OSM announced the Secretary's decision to impose the condition.

Proposal To Extend Deadline

By letter dated May 2, 1984, Iowa requested that OSM informally review Iowa House File 531, to determine if the legislation would satisfy the condition imposed on the Iowa program. Iowa stated that House File 531 was enacted by the 70th Iowa General Assembly and signed into law by the Governor to satisfy the condition. OSM reviewed House File 531 and advised Iowa by letter of June 8, 1984, that the legislation would not satisfy the condition because it did not require prepayment prior to judicial review.

On July 16, 1984, Iowa requested clarification of the alternatives available to the State program in view of OSM's determination that House File 531 would not satisfy the condition. OSM responded on August 6, 1984, by notifying Iowa that because of the good-faith efforts made by the Iowa Department of Soil Conservation and the Iowa General Assembly, OSM would propose that the deadline for Iowa to meet the condition be extended until June 30, 1985. OSM stated that its staff and legal counsel would be available to work with the State prior to the next legislative session to develop a proposal which will be acceptable to both OSM and the State.

Therefore, OSM published a notice in the **Federal Register** (49 FR 34530) proposing that the deadline for the State to meet this condition be extended until June 30, 1985. Comment was solicited for 30 days ending October 1, 1984.

Secretary's Decision

After considering the circumstances surrounding the condition and in view of Iowa's good-faith attempt to meet the condition, the Secretary has determined that an extension of the deadline for Iowa to satisfy condition (a) is warranted.

Public Comments

The Iowa DSC commented that in conjunction with the extension provided, it would work with the Department of the Interior, the Iowa Attorney General's office and the Iowa General Assembly to facilitate discussion of the issue. However, the DSC indicated that it believed that the legislation submitted to OSM had satisfied the condition. The Secretary appreciates Iowa's willingness to work toward resolution of the condition. However, the Secretary finds, pursuant to OSM's review of House File 531 and subsequent letter of June 8, 1984, to Iowa that the legislation would not satisfy the condition because it did not require prepayment prior to judicial review.

Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 915

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: October 30, 1984.

J. Steven Griles,

Acting Assistant Secretary, Land and Minerals Management.

PART 915—IOWA

§ 915.11 [Amended]

Section 915.11 is amended by substituting "June 30, 1985" for "June 30, 1984".

(Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*))

[FR Doc. 84-29024 Filed 11-2-84; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD3 83-059]

Drawbridge Operation Regulations; Lake Champlain (Missisquoi Bay), VT

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of Central Vermont Railway, the Coast Guard is changing the regulations governing the Missisquoi Bay railroad drawbridge between West Swanton and East Alburg, VT. The change will reduce the period that the bridge opens on signal on non-holiday weekdays and will change notice requirements for bridge openings from June 15 through September 15. Based on comments received, this final rule is amended to more effectively address the needs of the mariner and to reduce the hours that the bridge must be continuously manned. The existing regulations are being changed because of minimal openings outside the hours the bridge will open on signal. This action will continue to relieve the bridge owner of the burden of having a person constantly available to open the draw and will still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on December 5, 1984.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, Third Coast Guard District (212)668-7994.

SUPPLEMENTARY INFORMATION: On April 19, 1984, the Coast Guard published proposed rules (49 FR 15573) concerning this amendment. The Commander, Third Coast Guard District also published a similar proposal as a Public Notice dated May 4, 1984. In each notice,

interested persons were given until June 4, 1984 to submit comments.

Written comments were received and evaluated after June 4, 1984. This was done because two residents of Canada reported (by telephone) that they did not receive the public notice in time to submit comments before the closing date. This led the Coast Guard to suspect that no addresses in Canada received this notice in a timely manner. Since the northerly shore of Missisquoi Bay is in Canada and Canadian registered vessels regularly transit the bridge, input from this sector was deemed necessary to fully evaluate the proposed regulation.

On April 24, 1984, the Coast Guard published a final rule (49 FR 17450) that reorganized Coast Guard regulations for drawbridges (Part 117 of Title 33, Code of Federal Regulations) to consolidate common requirements and to organize bridge regulations into a more usable format. This final rule follows the revised numbering and format.

Drafting Information: The drafters of these regulations are Ernest J. Feemster, project manager, and Mary Ann Arisman, project attorney.

Discussion of Comments: Six written responses were received on proposed regulations to allow the bridge to open on signal from 9 a.m. to 5 p.m. from June 15 through September 15 with 24 hours notice at all other times. Three government agencies and one mariner who sold his boat had no objection or comment. The other two respondents objected to the regulations and suggested alternate regulations. One of the objectors also provided a petition with names of 22 other waterway users who objected to the regulations. Objections were made because the proposed regulations did not respond to the needs of boaters of the area. It was reported that boaters frequently use the waterway in the summer from Friday morning through Monday and this was not accounted for in the proposed regulations. The mariners suggested that the draw open on signal from June 15 through September 15 on Tuesday through Thursday between 9 a.m. and 5 p.m., and on Friday through Monday between 7 a.m. and 11 p.m., with two hours notice at all other times. From September 16 through June 14, the existing 24 hours notice would be retained.

Based on discussions with the railroad and the mariners, compromise regulations which will respond to mariner needs and will relieve the bridge owner of the responsibility to man the draw during certain periods are being issued. These regulations will require that the draw be opened on signal from June 15 through September 15: Monday through Friday (except holidays) from 9 a.m. to 5 p.m., and Saturdays, Sundays, Independence Day and Labor Day from 7 a.m. to 11 p.m. with two hours notice required at other times. From September 16 through June 14, the existing 24 hours notice will continue to be required.

Existing regulations require the bridge to open on signal from June 15 through September 15 from 7 a.m. to 11 p.m. with 24 hours notice at all other times.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. Summer recreational boaters normally are the only ones using the waterway and these regulations will be more responsive to their needs than former regulations. No vessel will be denied access through the bridge since provision for notice will be available whenever the bridge is not required to be manned. Additionally, very little boating occurs on the waterway from September 15 to June 15. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations: In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations is amended by revising § 117.993(c) to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.993 Lake Champlain.

* * * * *

(c) The draw of the Central Vermont Railway bridge across Missisquoi Bay, mile 105.6 shall open on signal:

(1) From June 15 through September 15:

(i) Monday through Friday from 9 a.m. to 5 p.m.:

(ii) Saturdays, Sundays, Independence Day and Labor Day from 7 a.m. to 11 p.m;

(iii) At all other times, if at least two hours notice is given.

(2) From September 16 through June 14, if at least 24 hours notice is given.

* * * * *

(33 U.S.C. 499; 49 CFR 1.46(c)(2); 33 CFR 1.05-1(g)(3))

Dated: October 24, 1984.

P.A. Yost,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 84-29063 Filed 11-2-84; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-9-FRL-2707-5]

Air Programs; Nevada State Implementation Plan Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: This notice takes final action to approve the Nevada 1982 carbon monoxide (CO) State Implementation Plan (SIP) revision for the Las Vegas Valley. This notice also takes final action to approve amendments to Nevada's motor vehicle inspection and maintenance (I/M) regulations, and to incorporate the amended regulations as well as State authorizing legislation into the approved SIPs for the Las Vegas Valley and Truckee Meadows. The above submittals are being approved because they meet the requirements of the Clean Air Act (CAA) and EPA policy pertaining to nonattainment areas which were unable to attain the CO national ambient air quality standards by 1982.

EFFECTIVE DATE: December 5, 1984.

ADDRESSES: Copies of the revisions are available for public inspection during normal business hours at the following locations:

Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, 5th Floor, San Francisco, CA 94105

Public Information Reference Unit, Environmental Protection Agency, 401 "M" Street, SW., Washington, D.C. 20460

Office of the Federal Register, 1100 "L" Street, NW., Room 8401, Washington, D.C.

Nevada Department of Conservation, and Natural Resources, 201 South Fall Street, Room 221, Carson City, NV 89710

Regional Administrative Planning Agency, 241 Ridge Street, Reno, NV 89504

Clark County Department of Comprehensive Planning, 225 Bridger

Avenue, 7th Floor, Las Vegas, NV 89155

FOR FURTHER INFORMATION CONTACT: Wallace Woo, Chief, State Liaison Section (A-2-2), Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-7634 FTS: 454-7634.

SUPPLEMENTARY INFORMATION:

Background

The Clean Air Act Amendments of 1977 required states to revise their SIPs by January 1979 for all areas that had not attained the national ambient air quality standards (NAAQS). These 1979 SIP revisions were to provide for attainment of the NAAQS by December 31, 1982. Those areas which demonstrated that 1982 attainment for ozone or carbon monoxide could not be achieved, even with the implementation of all reasonably available control measures, could request an extension of no later than December 31, 1987 to attain the standards. States were to submit to EPA 1982 SIP revisions for these extension areas by July 1, 1982.

On June 23, 1982 the State of Nevada submitted the 1982 CO SIP revision for the Las Vegas Valley. On February 3, 1983 (48 FR 5073) EPA proposed to disapprove the revision overall because the delay in implementing the vehicle inspection and maintenance (I/M) program did not represent an implementation schedule which was as expeditious as practicable. All other portions of the Las Vegas CO SIP revision were proposed to be approved. For a detailed discussion of the major I/M deficiency and EPA's evaluation of the other portions of the SIP revision, please refer to the February 3, 1983 proposal notice and its accompanying Technical Support Document (TSD).

On September 14, 1983, the Governor of Nevada submitted: (1) State legislation which mandated the start-up of an I/M program by October 1, 1983, (2) revised I/M rules and regulations, and (3) an I/M public education plan. These submittals revise the previously EPA approved I/M rules and regulations (46 FR 21758; April 14, 1981) which cover both the Las Vegas Valley and Truckee Meadows.

EPA evaluated the September 14, 1983 I/M submittals and determined they corrected several deficiencies noted in the April 14, 1981 and February 3, 1983 **Federal Register** notices. On October 1, 1983 the Nevada Department of Motor Vehicles began implementing an annual I/M program in Clark and Washoe Counties. On February 21, 1984 (49 FR 6386) EPA proposed to approve the September 14, 1983 I/M submittals. In addition, since the State was now implementing an approvable I/M program in Clark County, EPA proposed to fully approve the 1982 Las Vegas Valley SIP revision for CO. For a detailed discussion of the September 14, 1983 submittals, please refer to the February 21, 1984 notice of proposed rulemaking. The February 21, 1984 notice and its related TSD also contain EPA's response to four comments which were received on EPA's initial proposed rulemaking on the 1982 Las Vegas Valley SIP revision for CO published February 3, 1983.

Today's notice takes final action to approve both the 1982 Las Vegas Valley SIP revision for CO and the September 14, 1983 I/M revisions for the Las Vegas Valley and Truckee Meadows. Today's final actions are the same as those proposed on February 21, 1984 (49 FR 6386).

Public Comments

EPA received one comment on the actions it proposed in the February 21, 1984 **Federal Register.** The Nevada Department of Conservation and Natural Resources commented that it supports EPA's proposed approval of the September 14, 1983 I/M revisions and the 1982 Las Vegas Valley SIP revision for CO.

EPA Action

Nevada's June 23, 1982 and September 14, 1983 submittals have been evaluated for conformance with the requirements of Part D of the Clean Air Act and EPA policy. They are found to be approvable. Specifically, today's notice takes the following final actions: (1) To approve the September 14, 1983 submittal (which includes I/M legal authority (AB 677), revised I/M rules and regulations, and an I/M public awareness plan) and incorporate it into the SIP for the Las Vegas Valley and Truckee Meadows under Section 110 of the CAA and (2) to fully approve the 1982 Las Vegas Valley SIP revision for CO and incorporate it into the SIP under section 110 of the CAA.

This notice also corrects an administrative error made in an August 8, 1984 (49 FR 31683) notice of final rulemaking. The August 8, 1984 rulemaking inadvertently deleted portions of 40 CFR 52.1470 which had been incorporated by reference on March 27, 1984 (49 FR 11626).

Regulatory Process

The Office of Management and Budget has exempted this revision from the requirements of section 3 of Executive Order 12291.

Incorporation by reference of the State Implementation Plan for the State of Nevada was approved by the Director of the Federal Register on July 1, 1982.

Under section 307(b)(1) of the Clean Air Act, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Authority: Secs. 110, 129, 171 to 178 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7410, 7429, 7501, to 7508 and 7601(a)).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Incorporation by reference.

Dated: October 19, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

Subpart DD of Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart DD—Nevada

1. Section 52.1470 is amended by revising paragraph (c)(26), and by adding paragraph (c)(32) as follows:

§ 52.1470 Identification of plan.

* * * * *

(c) * * *

(26) The following amendments to the plan were submitted on September 14, 1983 by the Governor.

(i) Amendments to Chapter 445 of the Nevada Administrative Code.

(A) New or amended Sections 445.732, 445.808 (paragraphs (1), (2)(a-c), and (3)-(5)), 445.815 (paragraphs (1), (2)(a)(1 and 2), and (3)-(5)), 445.816 (paragraphs (1), (2)(a-i), and (3)-(5)), 445.843, and 445.846 (paragraphs (1), (3), and (4)).

(ii) The Truckee Meadows Air Quality Implementation Plan 1982 Update except for the attainment and RFP demonstrations and Legally Enforceable Measures portions of the plan.

(iii) Amendments related to Nevada's inspection and maintenance (I/M) program.

(A) State legislation (AB 677) which defers the start-up of the annual I/M program from July 1, 1983 to October 1, 1983.

(B) An I/M public education plan.

(C) Revisions to the Engine Emission Control Regulations (Nevada Administrative Code 455.851 to 445.945).

* * * * *

(32) The Las Vegas Valley 1982 Air Quality Implementation Plan (AQIP) Update for carbon monoxide submitted by the Governor on June 23, 1982.

* * * * *

[FR Doc. 84-28805 Filed 11-2-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[FCC 84-501]

Certification and Labelling of Low Power Communication Devices Produced Before October 1, 1975

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document deletes self-certification and labelling requirements for low power communications devices manufactured before October 1, 1975. These requirements have become obsolete and are therefore being deleted. The intended effect of this action is to remove the subject unnecessary requirements from the FCC Rules.

EFFECTIVE DATE: December 3, 1984.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Julius P. Knapp, Office of Science and Technology, Washington, DC 20554, (202) 653-8247.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 15

Communications equipment labelling.

Order

In the matter of Part 15 requirements pertaining to certification and labelling of low power communication devices produced before October 1, 1975.

Adopted: October 18, 1984.

Released: October 25, 1984.

By the Commission.

1. Sections 15.135 and 15.136, which specify self-certification and labelling requirements for low power communication devices manufactured before October 1, 1975, are obsolete. As of October 1, 1975, such devices were made subject to certification by the Commission. The old requirements had been retained beyond 1975 so that, when checking equipment on dealers' shelves for compliance, it would be clear which requirements applied. In general, it takes several years from the date of manufacture for low power communication devices, such as toy walkie-talkies and radio control devices, to move through the retail distribution chain. It is reasonable to assume that by now all equipment produced prior to October 1, 1975, has been sold. To the best of our knowledge, no enforcement questions concerning equipment that fell under these requirements have come up in several years. Therefore these requirements are no longer necessary and should be deleted. Deletion of these requirements would not affect the operational status of any such equipment still in use.

§§ 15.135 and 15.136 [Removed]

2. In light of the above, notice and comment on whether to retain these requirements are considered unnecessary. Accordingly, it is ordered that §§ 15.135 and 15.136 are removed in their entirety, effective December 3, 1984.

3. For further information concerning this Order, contact Julius P. Knapp, Office of Science and Technology, (202) 653-8247.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 84-29028 Filed 11-2-84; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 391 and 392

[BMCS Docket No. MC-96; Amdt. No. 83-12]

Qualifications of Drivers and Driving of Motor Vehicles; Drugs

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending the Federal Motor Carrier Safety Regulations (FMCSR) to incorporate into the driver qualifications rules and the driving rules, prohibitions in the transportation, possession, and use of drugs and other substances listed in Schedule I of the Drug Enforcement Administration's Schedules of Controlled Substances (SCS). This action is being taken because these substances degrade psychomotor performance which in turn degrade driving skills. At present many of these substances are not prohibited under the rules. The addition of Schedule I drugs and other substances to the rules will enable the motor carrier industry to reduce the risk of driver intoxication or deviant behavior caused by the use of dangerous substances, such as marijuana, heroin, and mescaline.

EFFECTIVE DATE: December 5, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Bureau of Motor Carrier Safety, 202-426-9767; or Mrs. Kathleen S. Markman, Office of the Chief Counsel, 202-426-0346, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: The FMCSR's current rules concerning drugs and other substances are found in 49 CFR 391.15 Disqualification of drivers, 391.41 Physical qualifications for drivers, and 392.4 Narcotics, amphetamine, and other dangerous substances. Section 391.15(c) lists specific disqualifying drug offenses. Section 391.41(b)(12), disqualifies those drivers who use an amphetamine, narcotic, or any habit-forming drug. Section 392.4 prohibits a person from operating or physically controlling a motor vehicle if that person posesses, is under the influence of, or is using, a narcotic drug, narcotic drug derivatives, an amphetamine, formulations of an amphetamine, or any other dangerous substance.

On November 24, 1980, the FHWA issued a notice of proposed rulemaking (NPRM), Qualifications of Drivers and Driving of Motor Vehicles; Drugs (Docket No. MC-96; Notice No. 80-12, 45 FR 77466), requesting comment on a proposal to update its regulatory approach by naming and classifying, on an individual basis, prohibited drugs and other substances. The FHWA proposed to utilize the classification system presented in the Drug Enforcement Administration's Comprehensive Drug Abuse Prevention and Control Act of 1970 (Pub. L. 91-513, October 27, 1970, 84 Stat. 1236), from which was established the SCS. The SCS would be the mechanism to bring about a more comprehensive and consistent drug regulatory program. The SCS would provide specific classification on whether a drug or other substance is prohibited. Also, the SCS is annually updated and lends itself to immediate decisionmaking by physicians, motor carriers, drivers, and BMCS personnel about the use, possession, transportation of, and driver

disqualification regarding the use of drugs and other substances.

The vast majority of commenters favored the NPRM without change or with some modifications. However, several commenters, the American Medical Association (AMA) being the foremost, took exception to the proposal. Its concern was that the proposal would, in some cases, prohibit a physician from prescribing necessary medicine to interstate drivers. This could result in a driver becoming a greater safety risk without the medication than with it. The AMA's comments were directed against the proposed inclusion of prescription drugs located in Schedules II, III, IV, and V. The AMA's and other's comments did not state opinions on Schedule I drugs and other substances. Schedule I drugs and other substances do not have accepted medical use in the United States.

The SCS consists of five Schedules of drugs and other substances. Schedule I contains drugs and other substances pharmacologically classified as opiates, opium derivatives, hallucinogens, depressants, and stimulants. Some well known examples of Schedule I drugs and other substances are heroin, lysergic acid diethylamide (LSD), marijuana, mescaline, and peyote. Under the criteria for classification in the SCS, Schedule I drugs and other substances have the highest potential for abuse. As the Schedules descend in number to Schedule V, the potential for abuse lessens.

In the NPRM of November 24, 1980, no interstate driver would have been permitted to use, possess, or transport a Schedule I or II drug or other substance. Schedule III, IV, V drugs and other substances could have been used only if a prescribing physician would certify that he or she has evaluated the driver's reaction to the drug and medically judged the drug to have no effect on the driver's ability to safely operate a motor vehicle. A conviction for a criminal offense, while on duty involving any Schedule drug or other substance would have been grounds for disqualification for 1 year.

The comment period for the drug related NPRM closed on March 24, 1981. It was decided, due principally to the comments of the AMA, that a conference of drug and transportation safety experts should be convened to make recommendations concerning the use of the SCS with regard to prescription drugs. However, since prohibitions on Schedule I drugs and other substances were not an issue in the NPRM of November 1980, the FHWA is incorporating into the present drug abuse regulations, prohibitions against the use, possession, or transportation of all drugs, and other substances found in Schedule I of the SCS.

Background

Simply defined, a drug is a substance introduced into the body to alter the way the body functions. A drug's chemical makeup may be simple or complicated. A drug may be extracted from natural sources, such as plants, berries, or trees, and used in its original state or purified. Or it may be made synthetically in a laboratory. [1]

A drug may affect a specific organ of the body, such as the brain, or many organs. Physicians usually prescribe drugs in order to relieve pain or to obtain a few specific desired results. Sometimes a drug produces side effects that have nothing to do with the result one is trying to obtain. Side effects are usually not desirable.

The drugs and other substances discussed in this document have the power to change feelings, emotions, and sometimes behavior. These drugs and other substances are psychoactive. Reactions to drugs depend on the dosage, the psychological and physiological makeup of the user, and how they are removed from the body.

With all of these influences playing a part, the same drug can affect two people differently or even the same person differently on different occasions. There are no simple, totally predictable, cause-and-effect relationships between a drug and produced behavior.

All drugs mentioned in this document can create a state of dependence if administered over a long enough period of time, and can result in the user experiencing a sense of need if deprived of the drug. The nature and strength of this sense of need changes with the kind of, or amount of a drug used.

Physical dependence develops when the body becomes accustomed to a drug and, in some unknown way, requires it in order to continue functioning. If the drug is suddenly withdrawn, uncomfortable and even violent physical reactions may occur. Withdrawal symptoms give a rough measure of how serious a drug habit has become.

Psychological dependence develops when the drug is relied upon to give a pleasurable emotional effect. If the drug is withdrawn, the user experiences a strong emotional, rather than physical craving for it. However, this type of dependence can be as compelling as a physical dependence.

The term "addiction" has been used to describe a state of strong physical dependence. However, its usage now includes psychological dependence. Drug researchers now believe that anyone who becomes so physically or psychologically dependent on a drug that they cannot function usefully without it and whose entire life centers around drugs is an addict.

The SCS's drug classification system is based on five groups of drugs and other substances and five schedules. [2] The placement of a drug in a group (narcotics, depressants, hallucinogens, stimulants, and cannabis) is based upon its biological and chemical composition, its accepted medical use in the United States, its overall effect upon the human body, and its potential for abuse. Schedule I includes drugs and other substances from all five of the above mentioned groups. These five groups are:

1. *Narcotics.* The term "narcotic" originally referred to a variety of substances that altered a user's state of consciousness. In current usage, it means opium, its derivatives, or synthetic substitutes that produce tolerance and dependence, both psychological and physical.

Relief of physical or emotional suffering through the use of narcotics may result in a short-lived state of euphoria. They also tend to induce drowsiness, apathy, lethargy, decreased physical activity, constipation, and pinpoint pupils. There is a greater probability of nausea, vomiting, and respiratory depression.

The initial effects of narcotics are often unpleasant, leading many to conclude that those who persist in their use may have latent personality disturbances that antedate the physical and psychological dependency produced. To the extent that the response is felt to be pleasurable, its intensity may be expected to increase with the amount of the drug administered. Repeated use, however, will result in increasing tolerance so that the user must administer progressively larger doses to attain the desired effect, thereby reinforcing the compulsive behavior known as "narcotics addiction."

Opium and other narcotics listed in Schedule I have no accepted medical use in the United States. Among the

[1] Harvey R. Greenburg, M.D., "What You Should Know About Drugs and Drug Abuse" (New York: Four Winds Press, 1971), pp. 6–11.

[2] U.S. Department of Justice, Drug Enforcement Administration. *Drug Enforcement* (Washington, D.C.: U.S. Government Printing Office, monthly issues of 2/79, 7/29, 10/79, and 3/80).

Schedule I drugs and other substances belonging to this group are opium, heroin, and morphine.

2. *Depressants.* These substances have a potential for both physical and psychological dependence. In excessive amounts, they produce a state of intoxication that is remarkably similar to that of alcohol.

As with alcohol, these effects may vary not only from person-to-person, but from time-to-time in the same individual. Small doses produce mild sedation; larger doses may produce a temporary state of euphoria, mood depressions, and apathy. Intoxicating doses invariably result in impaired judgment, slurred speech, and often unrealized loss of motor coordination and response time, which is critical to the safe operation of a motor vehicle. Depressants may also induce drowsiness, sleep, stupor, coma, and death. The danger of depressants multiplies when used in combination with other drugs or alcohol.

In addition to the dangers of disorientation which can result in accidents on the highway, habitual users incur increased long-term risk. Tolerance to depressants develops rapidly, extending the intake capacity while narrowing the range between an intoxicating and lethal dose.

Anyone who ceases to take or abruptly curtails the amount of a depressant on which he or she has become dependent will encounter severe symptoms of withdrawal. If the individual is dependent on a large amount of the drug, delirium, psychotic behavior, convulsions, or death may occur. Schedule I contains one depressant, mecloqualone.

3. *Hallucinogens.* The hallucinogenic drugs are substances, both natural and synthetic, that distort the preception of objective reality. They produce sensory illusions making it difficult to distinguish between fact and fantasy. If taken in large doses, they cause hallucinations, the apparent perception of unreal sights and sounds.

Under the influence of hallucinogens, a user may speak of "seeing" sounds and "hearing" colors. The senses of direction, distance, and time become disoriented. Restlessness and sleeplessness are common until the drug wears off. The greatest hazard of the hallucinogens is that their effects are unpredictable each time they are taken. Mood and expectation are primary determinants in the character of the experience. Latent psychoses (severe mental disorders) are easily unleashed when a user is in a hallucinogenic state. Other deep seated emotional problems surface that otherwise would not come to life. Toxic reactions may precipitate psychotic reactions and even death can occur. Persons in hallucinogenic states should be closely supervised and upset as little as possible to keep them from harming themselves and others.

Among the Schedule I drugs and other substances included in this group are LSD, psilocybin, psilocyn, and mescaline.

4. *Stimulants.* This group includes drugs which act directly on the central nervous system. These "speed up" drugs are used to relieve fatigue, lethargy, and to counteract chronic depression.

The oral consumption of stimulants may result in a temporary sense of exhilaration, superabundant energy, hyperactivity, dilated pupils, increased pulse rate, increased blood pressure, loss of appetite, and extended wakefulness. It may also induce irritability, anxiety, and apprehension. These effects are greatly intensified with administration by intravenous injection which may produce a sudden sensation know as a "flash" or "rush." The protracted use of stimulants is followed, however, by a period of depression know as "crashing" that is invariably described as unpleasant. Since the depression can be easily counteracted by another injection of a stimulant, this abuse pattern becomes increasingly difficult to break. Heavy users may inject themselves every few hours. The process sometimes continues to the point of delirium, psychosis, or physical exhaustion.

Tolerance develops rapidly, increasing the probability of overdose. Larger doses also result in various mental aberrations, the early signs of which include repetitive grinding of the teeth, touching, and picking the face and extremities, performing the same task over and over, a preoccupation with one's own thought processes, suspiciousness, and a feeling of being watched. Paranoia with auditory and visual hallucinations characterize the toxic syndrome resulting from continued large doses. Dizziness, tremor, agitation, hostility, panic, headaches, flushed skin, chest pain with palpitations, excessive sweating, vomiting, and abdominal cramps are among the symptoms of a sublethal overdose. In the absence of medical intervention, high fever, convulsions, and cardiovascular collapse may precede the onset of death.

Since death is due in part to the consequences of a marked increase in body temperature, it should be noted that physical exertion and environmental temperature may greatly increase the hazards of stimulant use. Fatalities under conditions of extreme exertion have been reported among athletes who have taken stimulants in moderate amounts.

Whether these drugs produce physical dependence is still questionable. There can be no doubt that the chronic large does users do not easily or soon return to normal if withdrawn from stimulants. Profound apathy and depression, fatigue, and disturbed sleep, up to 20 hours a day, which can last for several days, characterize the immediate withdrawal syndrome. A lingering impairment of preception and thought processes may also be present. So strong is the psychological dependence produced by the sustained use of stimulants that anxiety, an incapacitating tenseness, and suicidal tendencies may persist for weeks or months. An example of a Schedule I substance in this group is fenethylline.

5. *Cannabis.* This plant, grown extensively in Central and South America, Africa, India, and the Middle East, has been cultivated for centuries for the hemp fibers of the stem, for the seeds which are used in feed mixtures, and for the oil as an ingredient of paint. Also, it is grown for biologically active substances contained in its leaves and flowers.

As a psychoactive drug, cannabis is usually smoked in the form of loosely rolled cigarettes (joints), although it may also be taken orally. It may be smoked alone or in combination with other plant materials. Small doses tend to produce initial restlessness and an increased sense of well-being, followed by a dreamy, carefree state of relaxation; alteration of sensory perceptions, including an illusory expansion of time and space; a more vivid sense of touch, sight, smell, taste, and sound; hunger, especially a craving for sweets; and subtle changes in thought formation and expression. Moderate doses may result in a state of intoxication that intensifies these reactions. The individual may experience rapidly changing emotions, shifting sensory imagery, a flight of fragmentary thoughts with disturbed associations, a dulling of attention, and impaired memory, accompanied by an altered sense of self-identity and commonly a sense of enhanced insight. Large doses may result in distortions of body image, loss of personal identity, fantasies, and hallucinations. Very large doses may precipitate a toxic psychosis (i.e., tempoary drug-induced brain malfunction). Examples of Schedule I drugs and other substances are hashish and hashish oil.

As mentioned earlier, the drug classification system used in the SCS has five Schedules. Schedule I drugs and other substances are the most controlled

(they have the highest abuse potential). Schedule V drugs and other substances are the least controlled. Section 202(b) of the Comprehensive Drug and Abuse Prevention and Control Act sets forth the finding which must be made in order to place a substance in Schedule I. The finding is as follows:

Schedule I

(A) The drug or other substance has a high potential for abuse.

(B) The drug or other substance has no current accepted medical use in treatment in the United States.

(C) There is a lack of accepted safety for use of the drug or other substances under medical supervision.

The key criteria used most often in making the finding is the substance's potential for abuse, and its psychological and physical dependence.

Because there are approximately 100 drugs and other substances in Schedule I of the SCS, we will discuss only one, marijuana, whose effects we consider to be intermediate for those drugs and other substances found in Schedule I. Another reason for selecting marijuana is that its incident of usage, among Schedule I drugs, is probably the highest.

There has been a steady and dramatic increase in the use of marijuana during the last twenty years. In 1980, it was estimated that 16 million persons smoked marijuana monthly.[3] Noted along with this increase, was a significant incidence of marijuana use and driving.

Klein et al., studied the effect of marijuana on experienced users and chronic users.[4] Klein's road tests with drivers using high dosages of marijuana indicated dangerous effects on driving performance including a sensory illusion of roadway inversion. It should be noted that the effect of alcohol is primarily depression of the senses, whereas, the effect of marijuana is both hallucinatory and/or depression of the senses.

In 1973, Moscowitz studied the correlation between nonalcoholic drug use and automobile accident rates.[5] Moscowitz wanted to know what alcohol-influenced aspects of behavior lead to increased driving accident rates and to what extent does marijuana influence these aspects of behavior?

Moscowitz found that alcohol and marijuana effects differ. He concluded that the effect of marijuana on performance is not related to the division of attention or the information processing rate as it is for alcohol. Moscowitz suggested that his marijuana study showed that marijuana causes brief dropouts of attention. This could explain why drivers in a simulator, who have ingested marijuana, can perform the rather slow demands of tracking tasks but are caught by a randomly presented subsidiary task to which responses are measured in milliseconds. A considerable increase in the number and sophistication of subsidiary tasks are found in commercial driving as opposed to automobile driving. This is an important observation given the size and weight of the commercial motor vehicle.

In 1977, Milner drew together twenty-two scientifically valid reports on marijuana and driving hazards.[6] His research indicated that marijuana is positively associated with roadway fatalities. Controlled laboratory studies showed marijuana to adversely affect perception skills, coordination, braking time, and other motor skills, mood, and judgement. Milner's study showed that marijuana adversely affected driving safety in controlled areas (closed driving courses) and in an ordinary traffic setting.

The U.S. Department of Transportation, National Highway Traffic Safety Administration, 1979, Report to Congress stated that the incidence of marijuana use and then driving was approximately 25 percent of users.[7] The report cites a Sterling-Smith and Graham (1976) study which concludes that of 267 fatal accidents studied, the driver, in 43 cases, was under the influence of marijuana (16 percent). This figure's validity is somewhat suspect since the data was gathered through interviews rather than from blood specimens. However, the report also cited a study by Reeves (1979) where blood specimens of 1,792 California drivers cited for impaired driving, showed 285 (16 percent) tested positive for tetrahydrocannabinol, the main psychoactive ingredient of marijuana.

The Congressional report states that a conservative estimate of marijuana involvement in traffic crashes could be as high as 5%. The report also stated that in an experimental marijuana study (Jones, 1977) using specific mental, psychomotor, and sensory tests (e.g., time sense, reaction time, perceptual-motor coordination, and auditory signal detection), showed impairment by marijuana. The report cited (Burford, French, LeBlanc, 1974 and Chesher et al., 1976) who showed that the combination of alcohol and marijuana resulted in greater impairment than with either drug alone in laboratory studies. The report stated that studies involving actual car handling on closed courses support the implications of the laboratory tests.

Lee I. Dogoloff, in an article in the "Journal of Traffic Safety Education," 1980, stated that it has been shown in laboratory and field experiments that marijuana, at typical levels, impairs driving skills.[8] Dogoloff cited numerous studies in which marijuana was involved with fatal crashes. Involvement ranged from nine to 31 percent.

In an Australian report in 1980, a sophisticated laboratory study was made of alcohol and marijuana effects, both singularly and combined.[9] Some of the findings are that the depressant effects of marijuana are dose-dependent and the performance decrement resulting from the combined effects of marijuana and alcohol are readily measurable and is suggestive of synergism, i.e., the combined effect of the drug combination is greater than would have been expected from the sum of the effects of its components.

Moscowitz in a paper delivered in Sweden at the Alcohol Drugs and Traffic Safety conference in 1980 reported on his findings in a 1977 and 1980 study that marijuana-alcohol combination increased impairment of vigilance, information processing, and oculomotor control.[10]

The Greyhound Lines, Inc. has given, as part of pre-employment physical examination, urine drug screening tests. In November 1983, Greyhound experienced a work stoppage. As a result of the work stoppage it attempted to hire replacement drivers. Greyhound accepted applicants that were experienced intercity bus drivers. Greyhound reports that thirty percent of the applicants' urines were positive for marijuana. These positive tests were confirmed with a second test using a different methodology.

In summary, marijuana has been shown to elicit physiological effects in the laboratory which are considered

[3] *Marijuana and Driving*, Dogoloff, Lee I., Journal of Traffic Safety Education, October 1980, pps. 8–10.

[4] *Marijuana and Automobile Crashes*, Klein, A.W., Hoseph, J.R., Blackbourne, B.D., paper present at Third Annual Meeting of the Am. Acad. of Clinical Toxicology, 10–26–70, in San Francisco, CA.

[5] *Alcohol and Drug Impairment of the Driver*, Moskowitz, Herbert, Society of Automotive Engineers, Inc., 1973, p. 730094.

[6] *Marijuana and Driving Hazards*, Milner, Gerald, The Medical Journal of Australia, February 12, 1977, pps. 208–210.

[7] *Marijuana and Other Drugs and Their Relation to Highway Safety*, A Report to Congress, December 1970, U.S. DOT/NHTSA.

[8] Dogoloff, loc. cit.

[9] *Alcohol, Drugs, and Accident Risk*, Second report, Traffic Accident Research Unit, Department of Motor Transport, New South Wales, January 1980.

[10] *Alcohol, Drugs, Traffic Safety*, Ed. by Leonard Kolgberg, Almqust and Winshell International Stockholm, Sweden, 1980.

detrimental to safe driving. In closed courses and in traffic driving studies of drivers who have ingested marijuana, the drivers have exhibited physiological responses considered detrimental to safe driving. Marijuana and alcohol ingested together have a synergetic effect on driving performance. Fatal accidents of a significant number have been associated with marijuana ingestion singularly and in combination with alcohol. Data from a Greyhound sample of experienced intercity bus drivers shows a thirty percent usage rate of marijuana. These data matched to the scenario of commercial driving (i.e. high annual mileage, high stress occupation, and considerable accident consequences as a result of the size and weight of the commercial vehicles) and informal communications from State police indicating arrests of tractor-trailer drivers for marijuana possession and ingest, warrants the FHWA action of regulating the possession, transportation, or ingestion of marijuana and other drugs and other substances of Schedule I.

Revision and Addition

The majority of the commenters supported that portion of the drug related NPRM of November 24, 1980, which proposed establishing prohibitions in the transportation, possession, or use of the SCS's Schedule I drugs and other substances. The FHWA is amending the FMCSR by:

(1) Adding a prohibition to § 391.15(c) for the transportation, possession, or use of Schedule I drugs and other substances,

(2) Clarifying and strengthening the physical qualification requirements of § 391.41(b)(12), and

(3) Adding a table of Disqualifying Drugs and Other Substances as Appendix D to the FMCSR.

This table shall consist of the drugs and other substances, by official, common or usual, chemical, generic, or brand name designated for manufacturing and distribution.[11] All drugs or other substances found in this table have been evaluated in accordance with the following criteria:

(1) The risk, if any, to the public while under the influence of the drug or other substance;

(2) The state and availability of current scientific knowledge regarding the drug or other substance;

(3) Scientific evidence of the drug's or other substance's pharamcological effect, if known;

(4) The drug's or other substance's accepted medical use, if any, in treatment, in the United States; and

(5) The drug's or other substance's actual or relative potential for abuse.

The influence of drugs and other substances upon a person's driving abilities is a significant factor in the human performance element of motor vehicle safety. Slow reactions and bad judgment, added to faulty attitudes, emotional disturbances, and physical disabilities are responsible for a large number of accidents. Thus, one of the key factors to reducing accidents is the maintenance of the overall state of the driver's mental and physical health.

Several groups of drugs are known to affect a driver's overall state of mental and physical health, which in one manner or another affects driving ability. The more important groups have been discussed. Also, as previously discussed in the NPRM of November 24, 1980, further study (i.e., a conference of drug and safety experts) is to take place with respect to those drugs and other substances in Schedules II through V. Upon completion of this study, a second rulemaking action will be considered. The present drug rule's categories of drugs (i.e., narcotics, amphetamines, other habit-forming drugs, and dangerous substances) will remain a part of these revised rules.

The revision of the FMCSR and the addition of the table as Appendix D will add Schedule I drugs and other substances of the SCS to the drug rules. A driver who is convicted of a crime, committed while on duty, involving the transportation, possession, or use of a Schedule I drug or other substance, as amphetamine, a narcotic drug, a formulation of an amphetamine, or a derivative of a narcotic drug will be disqualified for a specified period of time. A driver will be disqualified for 1 year after the date of conviction or forfeiture of bond or collateral for a crime involving the use of a Schedule I drug or other substance, an amphetamine, a narcotic drug, a formulation of an amphetamine, or a derivative of a narcotic drug. If the crime solely involves the possession or the transportation of these substances, the first offense will disqualify the driver for 6 months. The shorter period of disqualification for possession or transportation of Schedule I drugs, amphetamines or narcotics relative to the disqualification period for usage reflects the possibility that drugs transported by a driver may not be intended for use while on duty. Thus, there is a chance for a diminished risk to the motoring public. However, drugs transported by a driver while on duty, by their presence, increases the likelihood of being used while the driver is in operating control of a commercial motor vehicle.

A driver who is convicted for operating a motor vehicle under the influence of alcohol, a Schedule I drug or other substance, an amphetamine, a narcotic drug, a formulation of an amphetamine, or a derivative of a narcotic drug will be disqualified for 1 year. If a driver has a current clinical diagnosis of a drug dependency of a Schedule I drug or other substance, an amphetamine, a narcotic, or any habit-forming drug, it will be cause for a driver to be found medically unqualified.

A driver with a drug dependency means a person who is using a drug and who is in a state of psychic or physical dependence, or both, arising from the use of that substance on a continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects and avoid the discomfort caused by its absence.

The term "current clinical diagnosis of" is specifically designed to encompass a current drug dependence or those instances where the individual's physical condition has not fully stabilized, regardless of the time element involved. If an individual is no longer dependent for such a period of time to recover good judgment, is beyond having any withdrawal effects (tremulousness, hallucinosis, convulsive seizures, or delirium tremens), and is no longer *physically or mentally* impaired to operate a vehicle safely, he or she may be considered for certification.

Finally, a driver may not operate, or control a motor vehicle if the driver possesses, is under the influence of, or is using, a Schedule I drug or other substance, a narcotic or narcotic derivative, an amphetamine or a formulation of an amphetamine. A driver shall not operate a motor vehicle if the driver is using any substance, to a degree which renders the driver incapable of safely operating a motor vehicle.

The word "knowing" is being removed from § 391.15(c)(2)(ii) because it has created confusion in interpretation of the rule. The removal of the word clarifies that it is the intent of the regulation to disqualify anyone who has been convicted of any offense described. The fact that the offense is a

[11] The method and classification system employed in controlling the manufacture, distribution, and medical use of the drug or other substance is set forth by the United States Department of Justice, Drug Enforcement Administration and the Department of Health and Human Services, Food and Drug Administration.

crime is sufficient to establish that the act was knowingly committed.

At present, in § 391.15(c)(2), disqualifying drug offenses must have been committed while operating a motor vehicle. This rule is being changed to include any offenses committed while the driver is on duty. The change reflects the fact that the effects of drugs usually continue to have an impact during the entire on-duty period of time. Also, a driver's nondriving on-duty activities could affect safety on the highway once driving takes place. An example is the pre-trip inspection and the loading operation. A driver performing these tasks with less than normal attention could easily miss a vehicle defect or improperly load a vehicle, either of which could result in an increased probability of an accident occurring later when driving.

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the policies and procedures of the Department of Transportation. A regulatory evaluation/regulatory flexibility analysis has been prepared and is available for review in the public docket. A copy may be obtained by contacting Mr. Neill L. Thomas at the address provided above under the heading "**FOR FURTHER INFORMATION CONTACT.**" The FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities based upon the evaluation prepared.

List of Subjects in 49 CFR Parts 391 and 392

Highways and roads, Motor carriers, Motor vehicles, Qualification of disqualifying offenses, physical standards, Driving standards, prohibited drugs.

In consideration of the foregoing and under the authority of 49 U.S.C. 3102, 49 CFR 1.48, and 301.60, the requirements contained in 49 CFR 391.15(c), 49 CFR 391.41(b)(12), and 49 CFR 392.4 are amended and, Appendix D is added to 49 CFR Chapter VII, Subchapter B as follows:

PART 391—[AMENDED]

1. Section 391.15(c) is revised to read as follows:

§ 391.15 Disqualification of drivers.

* * * * *

(c) *Disqualification for criminal offenses*—(1) *General Rule.* A driver who is convicted of (or forfeits bond or collateral upon a charge of) a disqualifying offense specified in paragraph (c)(2) of this section is disqualified for the period of time specified in paragraph (c)(3) of this section, if—

(i) The offense was committed during on-duty time as defined in § 395.2(a) of this subchapter or as otherwise specified; and

(ii) The driver is employed by a motor carrier or is engaged in activities that are in furtherance of a commercial enterprise in interstate, intrastate, or foreign commerce;

(2) *Disqualifying offenses.* The following offenses are disqualifying offenses:

(i) Operating a motor vehicle under the influence of alcohol, a Schedule I drug or other substance identified in Appendix D to this subchapter,[1] an amphetamine, a narcotic drug, a formulation of an amphetamine or a derivative of a narcotic drug;

(ii) Transportation, possession, or unlawful use of a Schedule I drug or other substance identified in Appendix D of this subchapter,[1] amphetamines, narcotic drugs, formulations of an amphetamine, or derivatives of narcotic drugs while on on-duty time;

(iii) Leaving the scene of an accident which resulted in injury or death; or

(iv) A felony involving the use of a motor vehicle.

(3) *Duration of disqualification for criminal misconduct*—(i) *First offenders.* A driver is disqualified for 1 year after the date of conviction or forfeiture of bond or collateral if, during the 3 years preceding that date, the driver was not convicted of, or did not forfeit bond or collateral upon a charge of an offense that would disqualify the driver under the rules of this section. *Exception.* The period of disqualification is 6 months if the conviction or forfeiture of bond or collateral solely concerned the transportation or possession of substances named in paragraph (c)(2)(ii) of this section.

* * * * *

2. Section 391.41(b)(12) is revised to read as follows:

§ 391.41 Physical qualifications for drivers.

* * * * *

(b) * * *

(12) Has no current clinical diagnosis of a drug dependence of a Schedule I drug or other substance identified in Appendix D to this subchapter,[1] an amphetamine, narcotic, or any other habit-forming drug; and

* * * * *

PART 392—[AMENDED]

3. The table of sections for Part 392, Subpart A is amended by changing the heading of § 392.4 to read "Drugs and other substances," and the section is revised to read as follows:

§ 392.4 Drugs and other substances.

(a) No driver shall be on duty and possess, be under the influence of, or use, any of the following drugs or other substances:

(1) Any Schedule I drug or other substance identified in Appendix D to this subchapter;[1]

(2) An amphetamine or any formulation thereof (including, but not limited, to "pep pills," and "bennies");

(3) A narcotic drug or any derivative thereof; or

(4) Any other substance, to a degree which renders the driver incapable of safely operating a motor vehicle.

(b) No motor carrier shall require or permit a driver to violate paragraph (a) of this section.

(c) Paragraphs (a)(2), (3), and (4) do not apply to the possession or use of a substance administered to a driver by or under the instructions of a physician who has advised the driver that the substance will not affect the driver ability to safely operate a motor vehicle.

(d) As used in this section, "possession" does not include possession of a substance which is manifested and transported as part of a shipment.

SUBCHAPTER B—[AMENDED]

4. Subchapter B is amended by adding Appendix D as set forth below:

Appendix D—Table of Disqualifying Drugs and Other Substances

This drug classification system's Schedule is adopted in whole from § 1308.11 of 21 CFR Part 1308, Schedules of Controlled Substances.

Schedule I—Controlled Substances

(a) Schedule I shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section. Each drug or substance has been assigned the DEA Controlled Substances Code Number set forth opposite it.

(b) *Opiates.* Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, salts is possible within the specific chemical designation:

[1] A copy of the Schedule I drugs and other substances may be obtained by writing to the Director, Bureau of Motor Carrier Safety, Washington, D.C. 20590, or to any Regional Office of Motor Carrier and Highway Safety of the Federal Highway Administration at the address given in § 390.40 of this subchapter.

(1) Acetylmethadol 9601
(2) Allylprodine 9602
(3) Alphacetylmethadol 9603
(4) Alphameprodine 9604
(5) Alphamethadol 9605
(6) Alpha-methylfentanyl (N-[1-alpha-methylbetaphenyl)ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine) 9814
(7) Benzethidine 9606
(8) Betacetylmethadol 9607
(9) Betameprodine 9608
(10) Betamethadol 9609
(11) Betaprodine 9611
(12) Clonitazene 9612
(13) Dextromoramide 9613
(14) Diampromide 9615
(15) Diethylthiambutene 9616
(16) Difenoxin 9618
(17) Dimenoxadol 9617
(18) Dimepheptanol 9618
(19) Dimethylthiambutene 9619
(20) Dioxphetyl butyrate 9621
(21) Dipipanone 9622
(22) Ethylmethylthambutene 9623
(23) Etonilazene 9624
(24) Etoxeridine 9625
(25) Furethidine 9626
(26) Hydroxypethidine 9627
(27) Ketobemidone 9628
(28) Levomoramide 9629
(29) Levophenacylmorphan 9631
(30) Morpheridine 9632
(31) Noracymethadol 9633
(32) Norlevorphanol 9634
(33) Normethadone 9635
(34) Norpipanone 9636
(35) Phenadoxone 9637
(36) Phenampromide 9638
(37) Phenomorphan 9647
(38) Phenoperidine 9641
(39) Piritramide 9642
(40) Proheptazine 9643
(41) Properidine 9644
(42) Propiram 9649
(43) Racemoramide 9645
(44) Sufentanil 9740
(45) Tilidine 9750
(46) Trimeperidine 9646

(c) *Opium derivatives.* Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine 9319
(2) Acetyldihydrocodeine 9051
(3) Benzylmorphine 9052
(4) Codeine methylbromide 9070
(5) Codeine-N-Oxide 9053
(6) Cyprenorphine 9054
(7) Desomorphine 9055
(8) Dihydromorphine 9145
(9) Drotebanol 9335
(10) Etorphine (except hydrochloride salt) 9056
(11) Heroin 9200
(12) Hydromorphinol 9301
(13) Methyldesorphine 9302
(14) Methyldihydromorphine 9304
(15) Morphine methylbromide 9305
(16) Morphine methylsulfonate 9306
(17) Morphine-N-Oxide 9307
(18) Myrophine 9308
(19) Nicocodeine 9309
(20) Nicomorphine 9312
(21) Normorphine 9313
(22) Phocodine 9314
(23) Thebacon 9315

(d) *Hallucinogenic substances.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position and geometric isomers):

(1) 4-bromo-2,5-dimethoxy-amphetamine 7391
Some trade or other names: 4-bromo-2,5-dimethoxy-α-methylphenthylamine; 4-bromo-2,5-DMA
(2) 2,5-dimethoxyamphetamine 7396
Some trade or other names: 2,5-dimethoxy-α-methylphenethylamine; 2,5-DMA
(3) 4-methoxyamphetamine 7411
Some trade or other names: 4-methoxy-α-methylphenethylamine; paramethoxyamphetamine, PMA
(4) 5-methoxy-3,4-methylenedioxy-amphetamine 7401
(5) 4-methyl-2,5-dimethoxy-amphetamine 7395
Some trade and other names: 4-methyl-2,5-dimethoxy-α-methylphenethylamine; "DOM"; and "STP"
(6) 3,4-methylenedioxy amphetamine 7400
(7) 3,4,5-trimethoxy amphetamine 7390
(8) Bufotenine 7433
Some trade and other names: 3-(β-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N-dimethyltptamine; mappine
(9) Diethytryptamine 7434
Some trade and other names: N,N-Diethyltryptamine; DET
(10) Dimethyltryptamine 7435
Some trade or other names: DMT
(11) Ibogaine 7260
Some trade and other names: 7-Ethyl-6,6β,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido [1', 2':1,2] azepino [5,4-b] indole; Tabermanthe iboga
(12) Lysergic acid diethylamide 7315
(13) Marihuana 7360
(14) Mescaline 7381
(15) Parahexyl—7374; some trade or other names: 3-Hexyl-1-hydrozy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran; Synhexyl.
(16) Peyote 7415
Meaning all parts of the plant presently classified botanically as *Lophophora williamsii Lemaire*, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds or extracts
(Interprets 21 USC 812(c), Schedule 1(c)(12))
(17) N-ethyl-3-piperidyl benzilate 7482
(18) N-methyl-3-piperidyl benzilate 7484
(19) Psilocybin 7437
(20) Psilocyn 7438
(21) Tetrahydrocannabinols 7370
Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of *Cannabis*, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:
Δ1 cis or trans tetrahydrocannabinol, and their optical isomers
Δ6 cis or trans tetrahydrocannabinol, and their optical isomers
Δ3,4 cis or trans tetrahydrocannabinol, and its optical isomers
(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)
(22) Ethylamine analog of phencyclidine 7455
Some trade or other names: N-ethyl-1-phenylcyclo-hexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl)ethylamine, cyclohexamine, PCE
(23) Pyrrolidine analog of phencyclidine 7458
Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP
(24) Thiophene analog of phencyclidine 7470
Some trade or other names: 1-[1-(2-thienyl)-cyclo-hexyl]-piperidine, 2-thienylanalog of phencyclidine, TPCP, TCP

(e) *Depressants.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Mecloqualone 2572

(f) *Stimulants.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Fenethylline 1503
(2) N-ethylamphetamine 1475

(49 U.S.C. 3102; 49 CFR 1.48 and 301.60)
(Catalog of Federal Domestic Assistance Program No. 20.217, Motor Carrier Safety)

Issued on: October 26, 1984.

Kenneth L. Pierson,

Director, Bureau of Motor Carrier Safety, Federal Highway Administration.

[FR Doc. 84-28923 Filed 11-2-84; 8:45 am]
BILLING CODE 4910-22-M

Proposed Rules

Federal Register
Vol. 49, No. 215
Monday, November 5, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76-222 (Pennsylvania-5)]

High-Cost Gas Produced From Tight Formations; Pennsylvania; Withdrawal of Rulemaking

Issued: November 1, 1984.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Withdrawal of proposed rulemaking and termination of docket.

SUMMARY: Under section 107(c)(5) of the Natural Gas Policy Act of 1978, the Federal Energy Regulatory Commission established that natural gas produced from tight formations qualifies as high-cost natural gas. Under the rule issued by the Commission which created this category of high-cost gas, at 18 CFR 271.703, jurisdictional agencies may submit recommendations of areas for designation as tight formations. This order permits the Bureau of Topographic and Geologic Survey of the Pennsylvania Department of Environmental Resources to withdraw a recommendation which it previously submitted to the Commission under § 271.703 that the Bald Eagle Formation be designated as a tight formation.

EFFECTIVE DATE: This withdrawal is effective November 1, 1984.

FOR FURTHER INFORMATION CONTACT: Elisabeth Y. Pendley, (202) 357-8511, or C. Webster Gray, (202) 357-8731.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A. G. Sousa, Oliver G. Richard III and Charles G. Stalon.

On December 1, 1983, the Federal Energy Regulatory Commission (Commission) received from the Commonwealth of Pennsylvania Department of Environmental Resources, Bureau of Topographic and Geologic Survey, (Pennsylvania), a recommendation in accordance under § 271.703 of the Commission's regulations that the Bald Eagle (Oswego) Formation located in Chapman, Grugan, and Gallaher Townships, Clinton County, and McHenry Township, Lycoming County, Pennsylvania, be designated as a tight formation. Pursuant to § 271.703(c)(4), a Notice of Proposed Rulemaking was issued by the Director of the Commission's Office of Pipeline and Producer Regulation on February 17, 1984,[1] to determine whether the recommendation should be adopted. One comment was received in support of the Notice of Proposed Rulemaking, and no party requested that a public hearing be held.

On August 13, 1984, the Commission received a request from Pennsylvania to withdraw its recommendation that the Bald Eagle (Oswego) Formation be designated as a tight formation. Notice of this request was issued in the **Federal Register** on August 30, 1984, (49 FR 34367). No comments were received in response to the notice.

The Commission Orders:

(A) The Commission hereby grants Pennsylvania's request that the recommendation be withdrawn; and

(B) The Commission withdraws its Proposed Rulemaking in this docket and terminates this docket. Such termination is without prejudice to any subsequent recommendation that Pennsylvania may submit that the Bald Eagle (Oswego) Formation be designated as a tight formation under § 271.703.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-29071 Filed 11-2-84; 8:45 am]

BILLING CODE 6717-01-M

[1] 49 FR 6920 (February 24, 1984).

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4 and 240

[Notice No. 543]

Materials and Processes Authorized for the Production of Standard Wine and for the Treatment of Juice, Standard Wine and Distilling Material; Correction

AGENCY: Bureau of Alcohol, Tobacco and Firearms, (ATF), Treasury.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects the text of a notice of proposed rulemaking which appeared in the issue of September 24, 1984 (49 FR 37527). The action is necessary to correct a technical error.

FOR FURTHER INFORMATION CONTACT: Michael J. Breen, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION: In FR Doc. 84-25059 appearing on page 37527 of the issue of Monday, September 24, 1984, make the following correction:

§ 4.22 [Corrected]

On page 37528, third column under § 4.22 Blends, cellar treatment, alteration of class and type, paragraph (b)(1) should read:

* * * * *

(b) * * *

Treatment of any class or type of wine with substances foreign to such wine which remain therein: *Provided*, That wine having a total sugar content of less than 5 grams per 100 milliliters may contain: For red and rose wine, not more than 125 parts per million total sulfur dioxide, or sulfites expressed as sulfur dioxide, and for white wine, not more than 175 parts per million total sulfur dioxide or sulfites expressed as sulfur dioxide; and *Provided*, That all wines having a total sugar content of 5 or more grams per 100 milliliters may contain up to 275 parts per million total sulfur

dioxide or sulfites expressed as sulfur dioxide, and *Provided further*, That all wines, regardless of sugar content, produced and cellar treated within a 180-day time period following the date of publication of a final rule in the **Federal Register**, may contain up to 350 parts per million total sulfur dioxide or sulfites expressed as sulfur dioxide.

* * * * *

Approved: October 29, 1984.

Stephen E. Higgins,

Director.

[FR Doc. 84-29069 Filed 11-2-84; 8:45 am]

BILLING CODE 4810-31-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 712

[OPTS-82017; FRL-2710-3]

Chemical Information Rules; Addition of Chemical

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPS proposes to add one chemical recommended for testing consideration in the Fourteenth Report of the Interagency Testing Committee (ITC) to the Preliminary Assessment Information rule. The chemical to be added is 3,4-dichlorobenzotrifluoride (CAS No. 328-84-7). The rule requires manufacturers of this chemical to complete the Preliminary Assessment Information Manufacturer's Report (EPA Form 7710-35). EPA will use the information submitted to evaluate risks associated with the chemical, as well as to determine whether the chemical should be included in testing rules issued under section 4 of the Toxic Substances Control Act (TSCA).

DATE: Comments must be submitted on or before December 5, 1984.

ADDRESS: Written comments should bear the document control number OPTS-82017 an should be submitted to: TSCA Public Information Office (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. E-108, 401 M St., SW., Washington, D.C. 20460.

All written comments filed under this notice will be available for public inspection in Rm. E-107 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TCSA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460, Toll Free: (800-424-9065), In Washington D.C.: (544-1404), Outside the USA: (Operator-202-545-1404).

SUPPLEMENTARY INFORMATION: OMB Control Number: 2000-0420.

I. Background

EPA issued the Preliminary Assessment Information Rule under section 8(a) of the Toxic Substances Control Act (TSCA) which was published in the **Federal Register** of June 22, 1982 (47 FR 26992).

The rule requires manufacturers of certain chemicals to report general production, use, and exposure information using the Preliminary Assessment Information Manufacturer's Report (EPA Form 7710-35).

The preamble to the rule explained that EPA would amend the list of chemicals subject to the Preliminary Assessment Information Rule when necessary to collect information on additional chemicals. This proposed amendment would add the chemical that the ITC's Fourteenth Report recommended for EPA's testing consideration.

When recommending chemicals to EPA for testing, the ITC can add these chemicals the section 4(e) Priority List either one of two ways. A chemical can be designated for response by EPA within 12 months or recommended but not designated for response within 12 months. Chemicals designated for 12 month response can be added to the section 8(a) rule under the automatic reporting provision of the rule (40 CFR 712.30(c)). However, up to the time the section 8(a) rule was promulgated, the ITC's recommendations had included only chemicals designated for EPA response within 12 months. Therefore, the rule and preamble did not distinguish between chemicals that were designated and those recommended but not designated for 12-month review. For this reason, only chemicals designated for 12 month review will be added under 40 CFR 712.30(c) as a final agency action. EPA is preparing an amendment to the section 8(a) rule which will change 40 CFR 712.30(c) to include clearly chemicals recommended by the ITC but not designated for 12-month review. Prior to adoption of such an amendment, non-designated chemicals will be added by notice and comment rulemaking under § 712.30(b) of the rule.

The ITC's Fourteenth Report, published in the **Federal Register** of May 29, 1984 (49 FR 22389) designated five individual chemicals for testing consideration and EPA response within 12 months. The Fourteenth Report also recommended one chemical for testing consideration without stating a given time period for EPA's response. EPA will use data from this rule to evaluate risks associated with this chemical (recommended, but not designated for 12 month response) and to determine whether the chemical should be included in testing rules under TSCA section 4.

II. Summary of Proposed Rule

Under 40 CFR 712.30(a), EPA proposes to amend the list of chemicals by adding 3,4-dichlorobenzotrifluoride (CAS No. 328-84-7), which was added to the section 4(e) Priority List (but not designated for response by EPA within 12 months) by the ITC in its Fourteenth Report.

Comments are solicited on this amendment to the list of chemicals on which a Preliminary Assessment Information Manufacturer's Report must be submitted within 60 days after the effective date of the final rule under section 8(a) of TSCA.

In a separate action the Agency is proposing for public comment the addition of this recommended chemical to the section 8(d) Health and Safety Data Reporting Rule.

III. Reporting Requirements

All persons who manufactured or imported the chemical named in this rule during their latest complete corporate fiscal year must submit a Preliminary Assessment Information Manufacturer's Report (EPA Form No. 7710-35) for each importing or manufacturing site which produces a subject chemical substance. This form must be submitted to the Agency no later than 60 days after the effective date of the final rule. Copies of the form are available from the TSCA Assistance Office at the address given above.

Manufacturers who qualify as small with respect to the previously precribed standards are exempt from this rule under 40 CFR 712.25(c).

Under § 712.30(a) (3) of the Preliminary Assessment Information rule, a company which has voluntarily submitted a Manufacturer's Report to the ITC will be allowed to submit a copy of the original report to EPA. Also under § 712.30(a) (3), persons who previously and voluntarily provided EPA with a Manufacturer's Report on the substance named in § 712.30(1) must notify EPA by letter of their desire to have this submission accepted in lieu of a current data submission and must follow all other procedures outlined in that section.

IV. Release of Aggregate Data

The Agency will follow procedures for the release of aggregate statistics as prescribed in a Rule Related Notice published in the **Federal Register** of June

13, 1983 (48 FR 27041). Included in the Notice are procedures for requesting exemptions from the release of aggregate data. Exemption requests concerning the release of aggregate data on any chemcial substance must be received by the EPA no later than 60 days after the effective date of the final rule.

V. Economic Impact

Employing the analysis prepared for the Preliminary Assessment Information rule published in the **Federal Register** of June 22, 1982, as well as other relevant data, the Agency has estimated the impact of the addition of this chemical on the firms that must report and upon the Agency in terms of data processing costs.

The Agency used the TSCA Inventory to generate a list of manufacturers of the chemical. After excluding the firms which reported no production for Inventory, five companies operating five sites were listed as manufacturers of the chemical. One of the companies subject to reporting for this rule appears to qualify as a small business as defined in 40 CFR 712.25(c). Thus, four firms (or four sites) are expected to report for this rule. A total of four reports are expected.

The costs for reporting are broken down as follows:

Reporting Costs

	Cost
(a) 4 reports expected at $515/report	$2,060
(b) 4 familiarization cases at $590/case	2,360
Total	4,420
Average cost per site	1,105
Average cost per firm	1,105

Reporting Burden

	Hours
(a) Familiarization (18 hours/site times 4 sites)	72
(b) Reporting (16 hours/report times 4 reports)	64
Total	136

EPA Cost

Processing Cost = $80/report times 4 reports = $320

VI. Judical Review

When this proposed rule is promulgated, judicial review may be available under section 19 of TSCA in the United States Court of Appeals for the District of Columbia Circuit or in the circuit in which the person seeking review resides or has its principal place of business. To provide all interested persons an equal opportunity to file a timely petition of judicial review and to avoid so called "races to the courthouse," EPA intends to promulgate this rule for purposes of judicial review 2 weeks after publication of the final rule in the **Federal Register**. The effective date will be calculated from the promulgation date.

VII. Rulemaking Record

The public record for this proposed rulemaking is a continuation of the record (OPTS-82004) for the Preliminary Assessment Information rule published in the **Federal Register** of June 22, 1982, (47 FR 26992). All documents, including the index to this public record, are available for public inspection in the OTS Reading Room from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in Rm. E-107, 401 M St., SW., Washington, D.C. 20460. This record includes basic information considered by the Agency in developing this proposed rule. The Agency will supplement the record with the following types of additional information as it is received.

1. All comments on this proposed amendment.

2. All relevant support documents and studies.

3. Records of all communications between EPA personnel and persons outside the Agency pertaining to the development of this rule. (This does not include inter- or intra-agency memoranda unless specifically noted in the index of the rulemaking record.)

4. Minutes, summaries, or transcripts of any public meetings held to develop this rule.

5. Any factual information considered by the Agency in developing the rule.

EPA will identify the complete rulemaking record on or before the date of promulgation of the regulation, as prescribed by section 19(a)(3) of TSCA, and will accept additional material for inclusion in the record at any time between this notice and that date. The final rule will also permit persons to point out any errors or omissions in the record.

VIII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore requires a Regulatory Impact Analysis. This regulation is not major because it will not result in an effect of the economy of $100 million or more, an increase in costs or prices, or any of the adverse effects described in the Executive Order.

This proposed amendment was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

This amendment, if promulgated, will be consistent with the objectives of the Regulatory Flexibility Act (Pub. L. 96-354) because it will not have a significant economic impact on a substantial number of small entities. Only four companies are expected to report under this rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., authorizes the Director of the Office of Management and Budget to review certain information collection requests by Federal agencies. OMB approved the reporting provisions contained in this request and issued OMB control number 2000-0420.

This rule requires manufacturers of chemicals to complete the preliminary Assessment Information Manufacturer's Report (EPA Form 7710-35). The information to be submitted will be used by the EPA to evaluate risks associated with the chemical, as well as to determine whether the chemical should be included in testing rules issued under section 4 of TSCA.

(Sec. 8(a), Pub. L. 94-469, 90 Stat. 2027 (15 U.S.C. 2607(a)))

List of Subjects in 40 CFR Part 712

Chemicals, Environmental protection, Reporting and recordkeeping requirements.

Dated: October 25, 1984.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 712—[AMENDED]

Therefore, it is proposed that 40 CFR 712.30 be amended by adding paragraph (1) to read as follows:

§ 712.30 Chemical lists and reporting periods.

* * * * *

(1) A Preliminary Assessment Information Manufacturer's Report must be submitted by [insert date 104 days after the date of publication of the final rule in the **Federal Register**] for the following chemical:

CAS No.	Name
328-84-7	3, 4-dichlorobenzotri-fluoride.

* * * * *

[FR Doc. 84-29049 Filed 11-2-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 716

[OPTS-84012; FRL 2710-2]

Health and Safety Data Reporting; Submission of Lists and Copies of Health and Safety Studies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This is a proposal to add one chemical (3,4-dichlorobenzotrifluoride, CAS No. 328-84-7) to the list of chemical substances and mixtures for which lists and copies of unpublished health and safety studies must be submitted under section 8(d) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2607(d). The chemical substance proposed to be added was recommended for testing by the Interagency Testing Committee (ITC), in its Fourteenth Report to EPA but not designated for 12-month review by EPA.

DATE: Comments must be submitted on or before December 5, 1984.

ADDRESS: Written comments should bear the document control number OPTS-84012 and should be submitted to: TSCA Public Information Office (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. E-108, 401 M Street, SW., Washington D.C. 20460.

All written comments filed under this notice will be available for public inspection in Rm. E-107 at the address given above from 8:00 a.m. to 4:00 p.m. Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency Rm. E-543, 401 M St., SW., Washington, D.C. 20460, Toll Free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: OMB Control Number 2070-0004.

I. Background

EPA issued regulations under section 8(d) of TSCA, which were published in the **Federal Register** of September 2, 1982 (47 FR 38780) to require submission of lists and copies of unpublished health and safety studies on specifically listed chemicals by chemical manufacturers and processors. Other persons in possession of such studies may be asked to submit them on a voluntary basis. The rule established standardized reporting requirements and provides for amending the list of chemicals subject to the rule. Chemicals may be added that have been recommended by the ITC for testing consideration under section 4 of TSCA or have been separately selected by the Environmental Protection Agency for evaluation.

The ITC, established under section 4(e) of TSCA (15 U.S.C. 2603(e)), recommends chemical substances, categories of substances, and mixtures for priority consideration by the EPA in the issuance of testing rules under section 4(e) of TSCA (15 U.S.C. 2603(a)). Section 4(e) directs ITC to revise its lists of recommendations every 6 months as the ITC determines to be necessary.

When recommending chemicals to EPA for testing, the ITC can add these chemicals to the section 4(e) Priority List either one of two ways. A chemical can be designated for response by EPA within 12 months or recommended but not designated for response within 12 months. Chemicals designated for 12 month response can be added to the section 8(d) rule under the automatic reporting provision of the rule (40 CFR 716.17(b)). However, up to the time the section 8(d) rule was promulgated, the ITC's recommendations had included only chemicals designated for EPA response within 12 months. Therefore, the rule and preamble did not distinguish between chemicals that were designated and those recommended but not designated for 12-month review. For this reason, only chemicals designated for 12-month review will be added under 40 CFR 716.17(b) as a final agency action. EPA is preparing an amendment to the section 8(d) rule which will change 40 CFR 716.17(b) to include clearly chemicals recommended by the ITC but not designated for 12-month review. Prior to adoption of such an amendment, non-designated chemicals will be added by notice and comment rulemaking under § 716.17(a) of the rule.

Under the rule implementing section 8(d) of TSCA, EPA will acquire unpublished health and safety studies on this chemical from manufacturers and processors of the chemical. The Agency will use the studies to support its investigations of the risks posed by the chemical and, in particular, to support its decisions whether to require industry to test the chemical under section 4 of TSCA.

II. Summary of this Proposed Rule

Under 40 CFR 716.17(a), EPA proposes to amend the list of chemicals by adding 3,4-dichlorobenzotrifluoride, CAS No. 328-84-7, which was added to the section 4(e) Priority List (but not designated for response by EPA within 12 months) by the ITC in its Fourteenth Report.

Comments are solicited on this amendment to the list of chemicals on which reporting of lists and copies of health and safety studies is required under section 8(d) of TSCA.

In addition to this proposal adding the chemical recommended by the ITC to the section 8(d) Health and Safety Data Reporting Rule, the Agency, in a separate action, is proposing adding this chemical to the list of substances and mixtures for which a completed Preliminary Assessment Information report must be submitted under section 8(a) of TSCA.

III. Economic Analysis

EPA estimates that submitting the required data on this additional chemical will cost approximately $6,700. This consists of the following:

	Cost
Corporate rule review	$2,260
Corporate review (site identification)	684
File search	1,323
Title listing	57
Photocopying (materials and labor)	264
Managerial review	1,672
Ongoing reporting	456
Total	6,736

If we assume ±30 percent margin of error in these estimates the range of probable cost varies from $8,710 to $4,690.

IV. Judicial Review

When this proposed rule is promulgated, judicial review may be available under section 19 of TSCA in the United States Court of Appeals for the District of Columbia Circuit or in the circuit in which the person seeking review resides or has its principal place of business. To provide all interested persons an equal opportunity to file a timely petition for judicial review and to avoid so called "races to the courthouse," EPA intends to promulgate this rule for purposes of judicial review 2 weeks after publication of the final rule in the **Federal Register**. The effective date will be calculated from the promulgation date.

V. Public Record

EPA has established a public record (docket number OPTS-84012) for this rulemaking document which, along with a complete index, is available for inspection in the OTS Reading Room, Rm. E-107, 401 M St., SW., Washington, D.C. 20460, from 8 a.m. to 4 p.m., Monday through Friday, except legal

holidays. This record includes basic information considered by the Agency in developing this rule. The Agency will supplement the record with additional information as it is received. The record includes the following:

(1) Health and Safety Study Reporting Regulations (40 CFR Part 716), Public Record, Docket No. 084003.

(2) Reports Impact Analysis for 40 CFR Part 716 and this proposed rule.

(3) Fourteenth Report of the Interagency Testing Committee (ITC); 49 FR 22389.

EPA anticipates adding to the rulemaking record the following types of information:

1. All comments on this proposed amendment.

2. All relevant support documents and studies.

3. Records of all communications between EPA personnel and persons outside the Agency pertaining to the development of this rule. (This does not include any inter- or intra-agency memoranda unless specifically noted in the index of the rulemaking record.)

4. Minutes, summaries, or transcripts of any public meeting held to develop this rule.

EPA will identify the complete rulemaking record on or before the date of promulgation of the regulation, as prescribed by section 9(a)(3) of TSCA, and will accept additional material for inclusion in the record at any time between this notice and that date. The final rule will also permit persons to point out errors or omissions in the record.

VI. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this regulation is not major because it does not have an effect of $100 million or more on the economy. It is expected to have a total cost to the industry of approximately $6,700. It does not have a significant effect on competition, costs, or prices.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (Pub. L. 96–354), EPA has determined that this rule will not have a significant economic impact on a substantial number of small entities since only three companies are expected to report under this rule.

C. Paperwork Reduction Act

The final section 8(d) rule (40 CFR Part 716) has been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (PRA) of 1980, 44 U.S. 3501 *et seq.* The OMB control number is 2070–0004.

(Sec. 8(d), Pub. L. 94–469, 90 Stat. 2029 (15 U.S.C. 2607(d)))

List of Subjects in 40 CFR Part 716

Chemicals, Health and safety, Environmental protection, Hazardous substances, Recordkeeping and reporting requirements.

Dated: October 25, 1984.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 716—[AMENDED]

Therefore it is proposed that 40 CFR 716.17 be amended by adding § 716.17(a)(9) to read as follows:

§ 716.17 Substances and designated mixtures to which this subpart applies.

(a) * * *

(9) As of [*insert date 44 days after the date of publication of the final rule in the* **Federal Register**] the following chemical substance is subject to this subpart:

CAS No.	Name
328-84-7	3,4,-dichlorobenzo-trifluoride.
* *	* * *

[FR Doc. 29045 Filed 11-2-84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3420

Competitive Leasing; Amendments to Federal Coal Management Regulations

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would amend the coal management regulations in 1943 CFR Subparts 3420 and 3422 to implement certain recommendations of the Commission on Fair Market Value Policy for Federal Coal Leasing. These amendments would clarify how regional coal lease tracts are studied in regional coal lease sale environmental impact statements, would change the minimum submissible bid from a national to a regional basis and would permit the withholding from disclosure to certain bids submitted at coal lease sales. The proposed rulemaking would also correct an error in the final rulemaking published in the **Federal Register** on July 30, 1982, when a section that was intended for removal was inadvertently retained.

DATE: Comments should be submitted by January 4, 1985. Comments postmarked or received after the above date may not be considered in the decisionmaking process on the issuance of a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, 1800 C Street, NW., Washington, D.C 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Tom Walker, (202) 343–4636,

or

Dan Dick, (202) 343–3537.

SUPPLEMENTARY INFORMATION: This proposed rulemaking would partially implement for recommendations of the Commission on Fair Market Value Policy for Federal Coal Leasing. These recommendations and the changes that would be made in the regulations for implementing them are discussed separately below.

This proposed rulemaking was sent to State Governors and major interest groups and organizations at their request in July 1984. Following this distribution, these groups asked the Department of the Interior to hold informational briefings on the proposed rulemaking. The briefings took place in Denver, Colorado, on July 23 and 24, 1984. Written comments received as a result of the distribution and briefings on the proposal have been made part of the comment docket, as will all other submitted comments, and are available for public review.

Subpart 3420—Competitive Leasing

In Recommendation III–1, the Commission on Fair Market Value Policy stated that the United States should establish and announce a coal leasing schedule to promote predictability and stability. At the same time, the Commission stated that it believed that the Department of the Interior should have the flexibility to change the timing of coal lease sales

and the quantity of coal offered based upon an assessment of emerging market conditions.

To implement this recommendation, the Secretary of the Interior proposed several actions in his response to the report of the Commission on Fair Market Value Policy. One of these proposals was not to identify a particular combination of tracts as the "preferred alternative" prior to the Secretary's decision on whether or not to hold a lease sale. This proposed rulemaking would delete the reference to a "preferred alternative" from the existing Federal coal leasing regulations and would replace it with a requirement for identification of one combination of tracts as the "proposed action." This action is consistent with Chapter 516 of the Department of the Interior Manual, which implements the Council on Environmental Quality's regulations as contained in 40 CFR 1502.14. The Departmental Manual, which was approved by the Council on Environmental Quality, provides that, for internally initiated proposals, the Department's proposed action shall be identified in the draft and final environmental impact statements.

As provided in § 3420.2(f) of the existing regulations, the regional leasing level would continue to form the basis of the proposal studied in the environmental impact statement. One combination of tracts within the leasing level would be designated as the proposed action. The regional coal team would continue to select one or more additional combinations of tracts both within and outside the leasing level as alternatives to the proposal.

All alternatives will be analyzed equally and fully in the environmental impact statement. However, by not indicating a preference, the Department of the Interior hopes to avoid the public perception that a final lease sale decision has been made prematurely during the preparation of the environmental impact statement.

The decision on the amount of coal to be offered for leasing, the timing and specific tracts offered will be made by the Secretary of the Interior after careful review of the final environmental impact statement, State and regional coal team recommendations and other pertinent factors. Identification of the specific tracts to be offered will be part of the record of decision. This approach is consistent with the National Environmental Policy Act of 1969 and the Council on Environmental Quality regulations.

The regional coal team will continue to recommend specific tracts for lease sale and a lease sale schedule to the Secretary of the Interior prior to the sale decision (see 43 CFR 3420.3–4(g)). This recommendation, along with the Governor's recommendations mandated by § 3420.4–3 (a) and (c), other appropriate consultation, and analyses of then-current market conditions, shall be carefully considered in the Secretary's decision.

Subpart 3422—Lease Sales

In Recommendation V–5, the Commission on Fair Market Value Policy recommended that minimum bids should be established on a regional basis and those bids should be expressed as an amount per ton. Currently § 3422.1(d) requires a national minimum bid of $100 per acre. To implement the Commission's recommendation, this proposed rulemaking would revise § 3422.1(d) to require establishment of minimum bids by coal production regions, to test the amount-per-ton as a cents-per-ton measurement in an upcoming coal lease sale and to determine after the sale what were the economic effects of the measurement change, if any. If the analysis proves a cents-per-ton measurement advisable, then its use would be continued.

Minimum bids are an administrative measure intended to screen out bids which are so low that they do not merit further consideration. Bids may be considered too low if they do not cover Federal leasing costs or if they are below the level of competitive bids typical of the region.

The Department of the Interior is especially interested in the public's views on how minimum regional bids should be derived and what their amounts should be, expressed both as some dollar amount per acre and as some amount per ton. These comments will be considered in setting the minimum regional bids, which will be published in the **Federal Register** for public information and use.

Minimum bids are not designed to reflect the Department of the Interior's estimate of fair market value for the tracts being offered for lease or to affect the number of legitimate bids for those tracts. They merely set a floor under which the Department will not consider bids submitted for the coal tracts offered for lease. Setting these minimum bids on a regional basis is intended to reflect the economic and resource differences among the Federal coal production regions.

The changes made by this proposed rulemaking to § 3422.1(d) will permit the Department of the Interior to test expressing the minimum bid as a cents-per-ton measure in an upcoming coal lease sale. After the initial testing and analyses, the Department may or may not continue the practice of expressing minimum bids as a cents-per-ton measurement.

This proposed rulemaking would also delete § 3422.1–1. Section 3422.1 was promulgated in July 1982 (47 FR 33140) to revise and replace § 3422.1–1. However, this section was inadvertently retained when the final rulemaking revising subpart 3422 was published and is no longer needed.

Section 3422.3–2 would be amended by this proposed rulemaking to delete the requirement that the authorized officer presiding at a coal lease sale announce the amounts of sealed bids submitted at the time of bid opening. It has been the practice of the Bureau of Land Management to announce all bids at the time they are opened. However, two of the Commission on Fair Market Value Policy recommendations, Recommendations V–3 and V–7 addressed this practice.

In Recommendation V–3, the Commission on Fair Market Value Policy concluded that intertract bidding in appropriate cases was a desirable method for leasing Federal coal. The Secretary of the Interior's response to the Commission report proposed that, as part of the intertract bidding procedures, only the bids on those tracts which will be leased should be made public. Announcement of these bids would occur after the sale and after postsale analyses had been concluded. Rejection of bids submitted for tracts offered for lease for coal involved in intertract sales does not necessarily mean that those bids did not constitute fair market value for those tracts. In those cases where the rejected bids did, according to the Department's analyses, meet the fair market value test, disclosing the bids could compromise the companies' internal resource and value estimates of the subject tracts. The United States would still have the financial data for use in other presale and postsale analyses.

Recommendation V–7 of the Commission on Fair Market Value Policy concerned the use of competitive bids on tracts as an appropriate source of data for postsale bid acceptance and rejection decisions. The Commission suggested that postsale appraisals could be influenced by knowledge of the bids submitted at the lease sales. The Commission believed that the amounts of the bids submitted for single-bid tracts should be withheld from the appraisal, i.e., evaluation, team until after the postsale appraisals have been completed for the multiple-bid tracts.

The postsale appraisals for single bid tracts will be based on the results of bidding on the multiple-bid tracts. Withholding the amounts of the bids for single-bid tracts from the evaluation team would avoid any potential bias in the evaluation of these tracts and might bolster public confidence in the Department's fair market value procedures.

The Secretary of the Interior adopted recommendation V-7 of the Commission on Fair Market Value Policy and will announce the bids on single-bid tracts only after the evaluation teams have completed the postsale appraisals. Therefore, the Department is using this proposed rulemaking as a vehicle to obtain public comment on this change in the lease sale procedures.

The principal author of this proposed rulemaking is Carole Smith, Division of Solid Mineral Leasing, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detail statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The changes that would be made by this proposed rulemaking should not affect the number of serious bids or the amount of coal leasing revenue received and distributed to the States, the Land and Water Reclamation Fund or the general revenues.

Small business set aside tracts will continue to be delineated and studied in environmental impact statements, and the Secretary of the Interior will continue to consider designating a reasonable number of such tracts as small business leasing opportunities.

The minimum bid will continue to be required from small business participants. Because the intent of the minimum bid is to eliminate only unrealistically low bids, no small businesses in serious competition for small business set-aside tracts should be affected by the change to a regional minimum bid that would be made by the proposed rulemaking.

Delaying or withholding announcement of the bids received for certain tracts should similarly not affect small business leasing opportunities.

There are no additional information collection requirements in this proposed rulemaking requiring the approval of the Office of the Management and Budget under 44 U.S.C. 3507.

List of Subjects in 43 CFR Part 3420

Administrative practice and procedure, Coal, Environmental protection, Intergovernmental relations, Mines, Public lands—mineral resources.

PART 3420—[AMENDED]

Under the authority of the Mineral Leasing Act, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351–359), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), the Multiple Mineral Development Act (30 U.S.C. 521–531), the Federal Coal Leasing Amendments Act of 1976, as amended (90 Stat. 1083–1092) and the Act of October 30, 1978 (92 Stat. 2073–2075), it is proposed to amend Subparts 3420 and 3422, Part 3420, Group 3400, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

§ 3420.3-4 [Amended]

1. Section 3420.3-4(b)(1) is amended by inserting after the first sentence of the section the sentence "One combination of tracts within the regional leasing level shall be identified as the proposed action for study in the environmental statement" and by removing from the second sentence the phrase "and shall identify the preferred alternative in the environmental impact statement".

2. Section 3422.1(c)(2) is revised to read:

§ 3422.1 Fair market value and maximum economic recovery.

* * * * *

(c)(1) * * *

(2) Minimum bids shall be set on a regional basis and shall be expressed either in dollars per acre or cents per ton.

§ 3422.1-1 [Removed]

3. Section 3422.1-1 is removed in its entirety.

§ 3422.3-2 [Amended]

4. Section 3422.3-2(a)(1) is amended by removing the last sentence thereof.

J. Steven Griles,

Acting Assistant Secretary of the Interior.

September 27, 1984.

[FR Doc. 84-29052 Filed 11-2-84; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 84-874]

Implementing the 1900-2000 kHz Frequency Band in the Radiolocation Service; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment/reply comment period.

SUMMARY: The FCC is extending the time for submission of comments and reply comments in this Docket concerning the implementation of the 1900–2000 kHz frequency band in the Radiolocation Service. The Commission has taken this action in order to give all interested parties ample opportunity to comment and to assure a complete record in the proceeding.

DATES: Comments are now due by January 24, 1985 and reply comments by March 11, 1985.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Private Radio Bureau (202) 634-2443.

SUPPLEMENTARY INFORMATION:

Order Extending Comment Period

In the matter of Amendment of Part 90 of the Commission's Rules to Implement the 1900–2000 kHz Frequency Band in the Radiolocation Service (PR Docket No. 84-874).

Adopted: October 23, 1984.

Released: October 25, 1984.

By the Chief, Private Radio Bureau.

1. On September 5, 1984, the Commission adopted a *Notice of Proposed Rule Making* in the above captioned matter. This *Notice* was released on September 11, 1984, and appeared in the **Federal Register**, 49 FR 36526, on September 18, 1984. Comments were due by October 26, 1984, and reply comments were due by November 23, 1984.

2. This *Notice* proposes to amend Part 90 of the Rules to provide detailed assignment standards for licensing radiolocation stations in the 1900–2000 kHz band. These stations will be displaced from the 1605–1705 kHz band as a result of the expansion of the AM broadcasting band agreed upon during the 1979 World Administrative Radio Conference. The expansion of the AM broadcasting band, however, is not planned to take place prior to 1988.

3. A petition to extend the comment period was received from the American Radio Relay League, Inc. (the "League") stating that insufficient time remains for League members and radio amateurs generally to prepare meaningful comments. The League states that additional time is needed to ascertain the technical necessity of reaccommodation of any radiolocation station within the 1900–2000 kHz band and to prepare the necessary technical exhibits.

4. We recognize the complexity of the issues raised by the displacement of licensees in this spectrum and we understand the concern of licensees currently using the 1900–2000 kHz band. Radiolocation stations will not be displaced before 1988 and, therefore, ample time remains to consider this matter. In light of these facts, we are extending the comment period in order to allow all interested parties to comment, thereby assuring a complete record in this proceeding.

5. Accordingly, it is ordered, pursuant to the authority set forth in § 0.331 of the Commission's Rules and Regulations, that interested parties will have until January 24, 1985 to file comments and until March 11, 1985 to file reply comments in this proceeding.

Federal Communications Commission.

Robert S. Foosaner,

Chief, Private Radio Bureau.

[FR Doc. 84-29029 Filed 11-2-84; 8:45 am]

BILLING CODE-6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1102

Ex Parte No. 290 (Sub-4)

Railroad Cost Recovery Procedures, Productivity Adjustment

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to file comments and replies to notice of proposed rules.

SUMMARY: In the **Federal Register** Notice of September 28, 1984 (49 FR 38319), the Commission established November 13, 1984 as the due date for comments and 30 days thereafter as the due date for replies concerning the adoption of a productivity adjustment to be applied to the Rail Cost Adjustment Factor (RCAF) and the discounting of the RCAF for a profit element. At the request of Western Coal Traffic League, Consumer Owned Power Coalition, Eastern Coal Transportation Conference, Fort Howard Paper Company, and Edison Electric Institute, the due dates have been postponed to February 11, 1985 for filing comments and to March 28, 1985 for filing replies.

DATES: Comments are due February 11, 1985 and replies are due March 28, 1985.

FOR FURTHER INFORMATION CONTACT:

William T. Bono, (202) 275–7354,

or

Robert C. Hasek, (202) 275–0938.

By the Commission, Reese H. Taylor, Jr., Chairman.

Dated: October 29, 1984.

James H. Bayne,

Secretary.

[FR Doc. 84-28998 Filed 11-2-84; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 49, No. 215
Monday, November 5, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Burley Tobacco; 1985 National Marketing Quota for Burley Tobacco

AGENCY: Agricultural Stabilization and Conservation Service, United States Department of Agriculture (USDA).

ACTION: Notice of Proposed Determination of 1985–86 Marketing Quota.

SUMMARY: The Secretary of Agriculture is required by the Agricultural Adjustment Act of 1938, as amended, to announce by February 1, 1985, the amount of the national marketing quota for burley tobacco for the 1985–86 marketing year. The public is invited to comment on the amount of the national marketing quota, the reserve supply level, and the amount of the national reserve, as set forth in this notice.

DATE: Comments must be received on or before December 31, 1984 in order to be assured of consideration.

ADDRESS: Send comments to the Director, Commodity Analysis Division, USDA, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013, (202) 447–3391.

FOR FURTHER INFORMATION CONTACT: Robert Tarczy, Agricultural Economist, Commodity Analysis Division, ASCS, USDA, Room 3736—South Building, P.O. Box 2415, Washington, D.C. 20013, (202) 447–5187. The Preliminary Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Robert L. Tarczy.

SUPPLEMENTARY INFORMATION: This notice has been reviewed in conformity with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major." This action has been classified "not major" since implementation of these proposed determinations will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical region; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program that this notice applies to are: Title—Commodity Loan and Purchases; Number—10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The Agricultural Adjustment Act of 1938, as amended (hereinafter referred to as the "Act"), requires the Secretary to determine and announce by February 1, 1985, the amount of the national marketing quota for the 1985–86 marketing year. The 1985–86 marketing year is the last of three consecutive years for which marketing quotas, approved by producers in a national referendum, will be in effect for burley tobacco.

Section 301(b)(14)(B) of the Act defines "reserve supply level" as the normal supply, plus 5 percent thereof, to insure a supply adequate to meet domestic consumption and export needs in years of drought, flood, or other adverse conditions, as well as in years of plenty. The phrase "normal supply" is defined in section 301(b)(10)(B) of the Act as a normal year's domestic consumption and exports, plus 175 percent of a normal year's domestic consumption and 65 percent of a normal year's exports as an allowance for a normal year's carryover. A "normal year's domestic consumption" is defined in section 301(b)(11)(B) of the Act as the yearly average quantity of burley tobacco produced and consumed in the United States during the ten marketing years immediately preceding the marketing year in which such consumption is determined (1984–85), adjusted for current trends in such consumption.

A "normal year's exports" is defined in section 301(b)(12) of the Act as the yearly average quantity produced in and exported from the United States during the ten marketing years immediately preceding the marketing year in which such exports are determined (1984–85), adjusted for current trends in such exports.

The reserve supply level for the 1984–85 marketing year was determined to be 1,629 million pounds. This was based on a normal year's domestic consumption of 480 million pounds and a normal year's exports of 140 million pounds (49 FR 6136). The proposed reserve supply level for the 1985–86 marketing year is 1,542 million pounds. This was based on a normal year's domestic consumption of 450 million pounds and a normal year's exports of 140 million pounds.

Section 301(b)(16)(B) of the Act defines "total supply" as the carryover at the beginning of the marketing year (October 1) plus the estimated production in the United States during the calendar year in which the marketing year begins. The total supply for the 1984–85 marketing year is 2,015 million pounds based on carryover of 1,326 million pounds and estimated marketings of 689 million pounds.

Section 319(c) of the Act provides that the national marketing quota for burley tobacco for a marketing year is the amount of that kind of tobacco produced in the United States which the Secretary estimates will be used domestically and will be exported during the marketing year, adjusted upward or downward in such amount as the Secretary, in his discretion, determines is desirable for the purpose of maintaining an adequate supply or for effecting an orderly reduction of supplies to the reserve supply level. The maximum downward adjustment is 10 percent of estimated domestic use and exports.

The amount of burley tobacco produced and utilized domestically

during the 1983–84 marketing year is estimated to be 410 million pounds, and the amount exported is estimated to be 110 million pounds, farm sales weight basis. The national marketing quota for burley tobacco for the 1984–85 marketing year is 583 million pounds (49 FR 6136). For the 1985–86 marketing year, utilization in the United States is estimated to be approximately 405 million pounds and exports are estimated to be approximately 145 million pounds. The total supply for the 1984–85 marketing year is 473 million pounds more than the proposed reserve supply level for the 1985–86 marketing year, but the amount of the adjustment desirable for maintaining an adequate supply or for effecting an orderly reduction of supplies to the reserve supply level is still being considered. However, the proposed national marketing quota is within the range of 525 to 550 million pounds for the 1985–86 marketing year.

For each marketing year for which marketing quotas are in effect in accordance with section 319(c) of the Act, the Secretary is authorized to establish a reserve (hereinafter referred to as the "national reserve") from the national marketing quota in an amount not in excess of 1 percent of the national marketing quota to be available for making corrections and adjusting inequities in farm marketing quotas and for establishing marketing quotas for new farms (i.e., farms for which farm marketing quotas have not been otherwise established). A reserve of 1,000,000 pounds was established for the 1984–85 marketing year (49 FR 6136). It is proposed that a national reserve be established for the 1985–86 marketing year.

Section 319(e) of the Act provides, in part, that each farm marketing quota shall be determined by multiplying the previous year's farm marketing quota by a national factor obtained by dividing the national marketing quota determined under subsection 319(c) (less the national reserve) by the sum of the farm marketing quotas for the immediately preceding year for all farms for which burley tobacco marketing quotas will be determined for such succeeding marketing year. However, such national factor shall not be less than 90 percent. The national factor for the 1984–85 marketing year was .90 (49 FR 6136).

Section 319(h) of the Act provides that effective with the marketing year beginning October 1, 1976, no marketing quota, other than a new farm marketing quota, shall be established for a farm on which no burley tobacco was planted or considered planted in any of the five years immediately preceding the year for which farm marketing quotas are being established.

PROPOSED DETERMINATIONS

Accordingly, comments are requested on the following proposed determinations with respect to burley tobacco for the 1985–86 marketing year:

1. A national marketing quota within the range of 525 to 550 million pounds.
2. A reserve supply level in the amount of 1,542 million pounds.
3. A national reserve within the range of 500,000 to 5,000,000 pounds.

Comments are not requested with respect to the national factor for the 1985–86 marketing year since the national factor is determined as the result of a mathematical computation in accordance with the formula prescribed in section 319(e) of the Act and does not involve administrative decision making.

All written submissions will be made available for public inspection from 8:15 a.m. to 4:45 p.m. Monday through Friday, in Room 3741—South Building, 14th and Independence Avenue SW., Washington, D.C.

Signed at Washington, D.C. on October 31, 1984.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 84-29051 Filed 10-31-84; 1:54 pm]

BILLING CODE 3410-05-M

Farmers Home Administration

Natural Resource Management Guide Meeting

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of meeting.

SUMMARY: The Farmers Home Administration (FmHA) State Office located in Alexandria, Louisiana, is announcing a public information meeting to discuss its draft Natural Resource Management Guide.

DATES: Meeting on November 28, 1984, 1:30 p.m. to 3:30 p.m..

Comments must be received no later than December 28, 1984.

ADDRESSES: Meeting location at Courthouse Annex, Louisiana and 7th Street, Port Allen, Louisiana 70767.

Written comments and further information will be addressed to: State Director, FmHA, 3727 Government Street, Alexandria, Louisiana 71302 (318–473–7920).

All written comments will be available for public inspection during regular work hours at the above address.

SUPPLEMENTARY INFORMATION: FmHA's Louisiana State Office has prepared a draft Natural Resource Management Guide. The Guide is a brief document describing the major environmental standards and review requirements that have been promulgated at the Federal and State levels and that affect the financing of FmHA activities in Louisiana. The purpose of the meeting is to discuss the Guide as well as to consider comments and questions from interested parties. Copies of the Guide can be obtained by writing or telephoning the above contract.

Any person or organization desiring to present formal comments or remarks during the meeting should contact FmHA in advance, if possible. It will also be possible at the start of the meeting to make arrangements to speak. Time will be available during the meeting to informally present brief, general remarks or pose questions. Additionally, a 30-day period for the submission of written comments will follow the meeting.

Dated: October 30, 1984.

Glendon Deal,

Acting Director, Program Support Staff.

[FR Doc. 84-29016 Filed 11-2-84; 8:45 am]

BILLING CODE 3410-07-M

Natural Resource Management Guide Meeting

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of meeting.

SUMMARY: The Farmers Home Administration (FmHA) State Office located in Montgomery, Alabama, is announcing a public information meeting to discuss its draft Natural Resource Management Guide.

DATE: Meeting on November 26, 1984, 2:00 p.m. to 4:00 p.m.

Comments must be received no later than December 26, 1984.

ADDRESSES: Meeting location at ASCS Conference Room, 474 South Court Street, Montgomery, Alabama 36104.

Written comments and further information will be addressed to: State Director, FmHA, 474 South Court Street, Montgomery, Alabama 36104 (205–832–7077).

All written comments will be available for public inspection during regular work hours at the above address.

SUPPLEMENTARY INFORMATION: FmHA's Alabama State Office has prepared a

draft Natural Resource Management Guide. The Guide is a brief document describing the major environmental standards and review requirements that have been promulgated at the Federal and State levels and that affect the financing of FmHA activities in Alabama. The purpose of the meeting is to discuss the Guide as well as to consider comments and questions from interested parties. Copies of the Guide can be obtained by writing or telephoning the above contact.

Any person or organization desiring to present formal comments or remarks during the meeting should contact FmHA in advance, if possible. It will also be possible at the start of the meeting to make arrangements to speak. Time will be available during the meeting to informally present brief, general remarks or pose questions. Additionally, a 30-day period for the submission of written comments will follow the meeting.

Dated: October 30, 1984.

Glendon Deal,

Acting Director, Program Support Staff.

[FR Doc. 84-29017 Filed 11-2-84; 8:45 am]

BILLING CODE 3410-07-M

COMMISSION ON CIVIL RIGHTS

Tennessee Advisory Committee; Changed Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights that a meeting of the Advisory Committee to the Commission originally scheduled for November 16, 1984, at Memphis, Tennessee (FR Doc 84-28393 on page 43482), has a new meeting date and time.

The meeting will convene at 4:00 p.m. and will end at 6:30 p.m., on November 19, 1984. The location will remain the same.

Dated at Washington, D.C., October 30, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-29018 Filed 11-2-84; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Issuance of an Export Trade Certificate of Review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to Bariston, Inc. This notice summarizes the conduct for which certification has been granted.

ADDRESS: The Department requests public comments on this certificate. Interested parties should submit their written comments, original and five (5) copies, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230

Comments should refer to the certificate as "Export Trade Certificate of Review, application number 84-00028."

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131, or Eleanor Roberts Lewis, Assistant General Counsel for Export Trading Companies, Office of General Counsel, 202-377-0937. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing the Act are found at 48 FR 10595-10604 (March 11, 1983) (to be codified at 15 CFR Part 325). A certificate of review protects its holder and the members identified in it from private treble damage actions and government criminal and civil suits under federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions.

Standards for Certification

Proposed export trade, export trade activities, and methods of operation may be certified if the applicant establishes that such conduct will:

1. Result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant;

2. Not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by the applicant;

3. Not constitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise, or services of the class exported by the applicant; and

4. Not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

The Secretary will issue a certificate if he determines, and the Attorney General concurs, that the proposed conduct meets these four standards. For a further discussion and analysis of the conduct eligible for certification and of the four certification standards, see "Guidelines for the Issuance of Export Trade Certificates of Review," 48 FR 15937-15940 (April 13, 1983).

The Office of Export Trading Company Affairs received an application for an export trade certificate of review from Bariston Inc. on August 6, 1984. The application was deemed submitted on August 8, 1984. A summary of the application was published in the **Federal Register** on August 17, 1984 (49 FR 32885-32886 (1984)).

Description of Certified Conduct

Based on analysis of the application and other information in their possession, the Department of Commerce has determined, and the Department of Justice concurs, that the following export trade, export trade activities, and methods of operation specified by Bariston Inc. meet the four standards of the Act:

Bariston Inc.—Application No. 84-00028.

Members: None.

Export Trade

Products: Shower curtains, towels, bathroom accessories, toilet seats, marine personal safety equipment, life preservers.

Export Markets

The export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

Bariston is certified:

1. To establish prices and quantities of Products for the Export Markets.

2. To enter into agreements with suppliers individually, wherein:

a. Bariston agrees not to represent any competitors of such suppliers as an Export Intermediary unless authorized by the supplier; and/or

b. The supplier agrees not to sell Products, directly or indirectly through

any other Export Intermediary, into the Export Markets in which Bariston represents the supplier as Export Intermediary, and if such sales do occur, to pay a commission to Bariston.

3. To enter into nonexclusive agreements with entities whereby those entities agree to act as agents and/or distributors for the Export Markets.

4. To enter into exclusive agreements with agents and distributors, wherein:

a. Bariston agrees to deal in Products in the Export Markets only through that agent or distributor, and/or

b. That agent or distributor agrees not to represent Bariston's competitors in the Export Markets or not to buy Products from Bariston's competitors for resale in the Export Markets.

5. The agreements described in paragraphs (2), (3), and (4) above may contain territorial and quantity restrictions for the Export Markets.

6. Bariston may refuse to quote prices to or to sell to buyers in the Export Markets whom Bariston considers to compete in the Export Markets with Bariston, its suppliers, its distributors and agents (exclusive and nonexclusive), or its retail customers in the Export Markets.

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.5(c), which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register.** Under section 305(a) of the Act and 15 CFR 325.10(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4001-B, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. The certificates may be inspected and copied in accordance with regulations published in 15 CFR Part 4. Information about the inspection and copying of records at this facility may be obtained from Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling 202-377-3031.

Dated: October 30, 1984.

Irving P. Margulies,

General Counsel.

[FR Doc. 84-28987 Filed 11-2-84; 8:45 am]

BILLING CODE 3510-DR-M

Decision on Application for Duty-Free Entry of Scientific Instrument; Cornell University

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 83-343R. Applicant: Cornell University, Ithaca, NY 14853. Instrument: Gammacell-40 Irradiator with Twin Caesium-137 Sources. Original notice of this resubmitted application was published in the **Federal Register** of November 21, 1983 (49 FR 56619).

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: This application is a resubmission of Docket Number 83-343, which was denied without prejudice to resubmission for informational deficiencies. The foreign instrument has a uniform dose distribution of ±5 percent and can be used to irradiate either mice or rats in groups without restraint of movement. The National Institutes of Health advises in its memorandum dated July 26, 1984 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no Domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-29022 Filed 11-2-84; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; University of North Carolina at Chapel Hill

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84-210. Applicant: University of North Carolina at Chapel Hill, Chapel Hill, NC 27514. Instrument: Rotating Anode X-ray Generator, Model GX-13 with Accessories. Manufacturer: Marconi Avionics, United Kingdom. Intended use: See notice at 49 FR 24912.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides high power x-ray beams focused to a small area (400 watts at 0.2 x 0.2 square millimeters). The National Institutes of Health advises in its memorandum dated August 24, 1984 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-29021 Filed 11-2-84; 8:45 am]

BILLING CODE 3510-DS-M

Application for Duty-Free Entry of Scientific Instrument; Vanderbilt University

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. The application may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of

Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84-86R. Applicant: Vanderbilt University, Nashville, TN 37232. Instrument: Mass Spectrometer/Data System, Model 70/250. Original notice of this resubmitted application was published in the **Federal Register** of March 5, 1984 (49 FR 8056).

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

[FR Doc. 29023 Filed 11-2-84; 8:45 am]

BILLING CODE 3510-DS-M

[Case No. 646]

Microelectronics Research Institute and Dr. Athol M. Harrison, Respondents; Order Amending Temporary Denial of Export Privileges

By Order of November 23, 1983 (48 FR 54259 (December 1, 1983)), Dr. Hendrik Christo Viljoen was designated, in Paragraph III, as a party related to one or more of the respondents and was temporarily denied, pursuant to § 388.19 of the Export Administration Regulations (currently codified at 15 CFR Parts 368-399 (1984)), all privileges of participating, in any manner or capacity, in transactions involving the export of U.S.-origin commodities or technical data. An Order of December 21, 1983 (48 FR 57347 (December 29, 1983)) subsequently amplified the addresses listed in the November 23, 1983 Order for one of the respondents and three of the named related parties; and an Order of January 31, 1984 (49 FR 4810 (February 8, 1984)) then consolidated the November 23 and December 21 Orders and also corrected errors contained in them and reversed their sequence of listing the respondents.

Dr. Viljoen has moved to vacate the Order of November 23, 1983 as to himself on the ground that he lacks any relationship with any of the respondents such that the Order should apply to him. The Department of Commerce (the "Department") has stated that it does not oppose Dr. Viljoen's motion.

Based upon the representations made by Dr. Viljoen and the Department, I find that vacating, as to Dr. Viljoen, the Order of November 23, 1983, as amplified in the December 21, 1983 Order and reissued in the January 31, 1984 Order, is warrented, and that so vacating these Orders will not jeopardize their purpose.

Accordingly, it is hereby ordered that, effective immediately, the Order of November 23, 1983, as amplified by the December 21, 1983 Order and reissued in the January 21, 1984 Order, is amended by deleting, from the related parties named in such Orders, the following: Dr. Hendrik Christo Viljoen, c/o Microelectronics Research Institute, P.O. Box 7232 Loop Station, 7th Floor, Motor and General Building, Cape Town, South Africa.

A copy of this Amendment of the Order of November 23, 1983, as amplified by the December 21, 1983 Order and reissued in the January 31, 1984 Order, shall be served upon Dr. Viljoen, upon each of the respondents, and upon each of the related parties named in these Orders, and a copy of this Amendment shall be published in the **Federal Register.**

Dated: October 30, 1984.

Thomas W. Hoya,

Hearing Commissioner.

[FR Doc. 84-29068 Filed 11-2-84; 8:45 am]

BILLING CODE 3510-DT-M

Exporters' Textile Advisory Committee; Open Meeting

A meeting of the Exporters' Textile Advisory Committee will be held December 13, 1984 at 1:30 p.m., in the "Music Box"/Plymouth Room of the Grand Hyatt Hotel, 42nd and Lexington Avenue, New York, New York. The Committee provides advice about ways to promote increased exports of U.S. textiles and apparel.

Agenda: Review of export data; report on conditions in the export market; recent foreign restrictions affecting textiles; export expansion activities; and other business.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes, contact Helen LeGrande (202/377-3737).

Dated: October 30, 1984.

Walter C. Lenahan,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 84-29019 Filed 11-2-84; 8:45 am]

BILLING CODE 3510-DR-M

Subcommittee on Export Administration of the President's Export Council; Renewal

AGENCY: International Trade Administration, Commerce.

ACTION: The purpose of this notice is to announce the renewal of the Subcommittee on Export Administration of the President's Export Council.

SUMMARY: The Subcommittee is being renewed pursuant to Executive Order 12489 of September 28, 1984. The Subcommittee advises on matters pertinent to those portions of the Export Administration Act of 1979 (50 U.S.C. App. 2401, et seq.) that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations, and of controlling trade for national security, foreign policy, and short supply reasons.

Representatives shall be balanced among large and small firms with interests in exporting and exporting control matters. To the extent possible, such representatives shall be from all parts of the country. They shall be appointed by the Secretary of Commerce and will serve at his discretion.

FOR FURTHER INFORMATION CONTACT: Debbie Kappler, Administrative Assistant, Office of the Assistant Secretary for Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, Telephone (202) 377-1455 or Ms. Linda A. Engelmeier, Committee Management Analyst, U.S. Department of Commerce, (202) 377-4217.

SUPPLEMENTARY INFORMATION: The Subcommittee was originally established as a subordinate committee of the President's Export Council pursuant to the provisions of section 3 of Executive Order 11753 of June 1, 1976.

Dated: October 30, 1984.

Christos N. Kyriazi,

Assistant Secretary for Administration.

[FR Doc. 84-29064 Filed 11-2-84; 8:45 am]

BILLING CODE 3510-CW-M

National Bureau of Standards

[Docket No. 40108-4108]

Approval of Federal Information Processing Standard 108, Alphanumeric Computer Output Microform Quality Test Slide

AGENCY: National Bureau of Standards, Commerce.

ACTION: The purpose of this notice is to announce that the Secretary of Commerce has approved a new standard, which will be published as FIPS Publication 108.

SUMMARY: On June 29, 1983, notice was published in the **Federal Register** (48 FR 29935) that a Federal Information Processing Standard for Alphanumeric Computer Output Microform Quality Test Slide was being proposed for Federal use.

The written comments submitted by interested parties and other material available to the Department relevant to

this standard were reviewed by NBS. On the basis of this review, NBS recommended that the Secretary approve the standard as a Federal Information Processing Standard (FIPS), and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary, and which includes an analysis of the written comments received, is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6622, Herbert C. Hoover Building, 14th Street between Constitution Avenue and E Street, NW., Washington, DC 20230.

The approved standard contains two portions: (1) An announcement portion which provides information concerning the applicability, implementation, and maintenance of the standard and (2) a specifications portion which deals with the technical requirements of the standard. Only the announcement portion of the standard is provided in this notice.

ADDRESS: Interested parties may purchase copies of this standard, including the technical specifications portion, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this standard is set out in the Where to Obtain Copies Section of the announcement portion of the standard.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas C. Bagg, Center for Computer Systems Engineering, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg , MD 20899, (301) 921-3723.

Dated: October 31, 1984.

Raymond G. Kammer,

Acting Director.

Federal Information Processing Standards Publication 108

(Date)

Announcing Standard for Alphanumeric Computer Output Microform Quality Test Slide

Federal Information Processing Standards Publications are issued by the National Bureau of Standards pursuant to section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 89-306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973) and Part 6 of Title 15 Code Federal Regulations (CFR).

Name of Standard. Alphanumeric Computer Output Microform Quality Test Slide (FIPS PUB 108).

Category of Standard. Hardware Standard, Media.

Explanation. This standard provides detailed information for the preparation of a test form slide to ensure the generation of quality microforms by computers.

Approving Authority. Secretary of Commerce.

Maintenance Agency. U.S. Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

Cross Index. Association for Information and Image Management Standard for Alphanumeric COM Quality Test Slide (AIIM MS28-1983).

Related Documents.

a. Federal Information Processing Standards Publication (FIPS PUB) 82, Guideline for Inspection and Quality Control for Apphanumeric Computer-Output Microforms.

b. ANS/NMA MS1-1981, American National Standard Practice for Operational Practice/Inspection and Quality Control for Alphanumeric Computer-Output Microform.

Applicability. This standard is recommended for the acquisition of test form slides procured to verify and maintain the quality of microforms generated by alphanumeric computer output microform devices. Users of existing equipment are encouraged to use this standard. Test methods for evaluating equipment quality which are not in accordance with this standard should be evaluated to ensure that the COM devices to which they are applied are producing the quality of images required.

Specification. The specifications are contained in "Alphanumeric Computer Output Microform Quality Test Slide" MS28-1983 published by Association for Information and Image Management.

Qualification. Certain dimensional details for the finished test slide are not included since they depend upon the mounting required for the particular COM recorders for which the slide is intended. The COM recorder manufacturer shall supply this information.

Implementation. This standard becomes effective upon publication in the **Federal Register** of an announcement by the National Bureau of Standards of approval by the Secretary of Commerce. Use by Federal agencies is encourage when such use contributes to operational benefits, efficiency, or economy.

Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the Association for Information and Image Management.) When ordering, refer to Federal Information Processing Standards Publication 108 (FIPS PUB 108), and title. Payment may be made by check, money order, purchase order, credit card, or deposit account.

[FR Doc. 84-29055 Filed 11-2-84; 8:45 am]

BILLING CODE 3510-13-M

[Docket No. 40110-4110]

Approval of Federal Information Processing Standard 33-1, Character Set for Handprinting

AGENCY: National Bureau of Standards, Commerce.

ACTION: The purpose of this notice is to announce that the Secretary of Commerce has approved a revised standard, which will be published as FIPS Publication 33-1.

SUMMARY: This revised standard adopts in whole the American National Standard X3.45-1982, Character Set for Handprinting. The revised specifications incorporate minor editorial and technical modifications, not substantive changes.

The document which was presented to the Secretary, is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6622, Herbert C. Hoover Building, 14th Street between Constitution Avenue and E Street, NW., Washington, DC 20230.

The approved standard contains two portions: (1) An announcement portion which provides information concerning the applicability, implementation, and maintenance of the standard and (2) a specifications portion which deals with the technical requirements of the standard. Only the announcement portion of the revised standard is provided in this notice.

ADDRESS: Interested parties may purchase copies of this revised standard, including the technical specifications portion, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this revised standard is set out in the Where to Obtain Copies Section of the announcement portion of the standard.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas C. Bagg, Center for Computer Systems Engineering, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, (301) 921-3723.

Dated: October 31, 1984.

Raymond G. Kammer,

Acting Director.

Federal Information Processing Standards Publication 33-1

(Date)

Announcing the Standard for Character Set for Handprinting

Federal Information Processing Standards Publications are issued by the National Bureau of Standards pursuant to section 111(f)(2) of the Federal Property and

Administration Services Act of 1949, as amended, Pub. L. 89–306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973) and Part 6 of Title 15 Code of Federal Regulations (CFR).

Name of Standard. Character Set for Handprinting (FIPS PUB 33–1).

Category of Standard. Hardware Standard, Character Recognition

Explanation. This FIPS PUB announces the adoption of the American National Standard X3.45–1982, Character Set for Handprinting, as a Federal Information Processing Standards. This standard provides the description, scope, and application rules for a character set for handprinting. A major purpose of this standard is to reduce the cost of data input into ADP systems which use Optical Character Recognition (OCR) equipment. This revised standard supersedes FIPS 33 in its entirety.

Approving Authority. Secretary of Commerce.

Maintenance Agency. U.S. Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

Cross Index. American National Standard Character Set for Handprinting (ANSI X3.45–1982).

Related Documents.

a. Federal Information Processing Standards Publication (FIPS PUB) 40, *Guideline for Optical Character Recognition Forms.*

b. Federal Information Processing Standards Publication (FIPS PUB) 85, *Optical Character Recognition (OCR) Inks.*

c. Federal Information Processing Standards Publication (FIPS PUB) 90, *Guideline for Optical Character Recognition (OCR) Print Quality.*

d. Federal Information Processing Standards Publication (FIPS PUB) 1–1, *Code for Information Interchange.*

e. Federal Information Processing Standards Publication (FIPS PUB) 15, *Subsets of the Standard Code for Information Interchange.*

f. American National Standard X3.86–1980, *American National Standard for Optical Character Recognition (OCR) Inks.*

g. American National Standard X3.99–1983, *American National Standard for Information Systems—Optical Character Recognition (OCR)—Guidelines for OCR Print Quality.*

h. American National Standard X3.4–1977, *American National Standard for Code for Information Interchange (ASCII).*

Applicability. This standard is applicable to Optical Character Recognition (OCR) system utilizing any part or all of the character set contained herein when used in data entry systems. However, when data or information is being prepared using OCR techniques for the purposes of the interchanging information, the appropriate graphic or control characters of FIPS PUB 1–1 *Code for Information Interchange*, or an appropriate subset as defined in FIPS PUB 15, *Subsets of the Standard Code for Information Interchange*, shall be used for such interchange.

Specifications. The standard adopts in whole the American National Standard X3.45–1982, Character Set for Handprinting.

Qualifications. The American National Standard Character Set for Handprinting describes a set of characters and associated procedural rules for use in numeric handprinted characters. Additional standards and information sources are required to describe the full set of necessary characteristics of an installed, operating OCR system. In general, these cover the topics of OCR Forms, OCR Print Quality, and OCR Tutorial Papers.

The set of characters and associated procedural rules described in this standard may also provide a method of improved human-to-human communication. Such an application of the standard is optional; however, it is urged that the use of the standard for such human-to-human communications be carefully considered for its contribution to increased efficiency and ease of operation wherever handprinted characters are involved in a data processing environment.

Special Information. The original character set remains unchanged with the exception of the Yen symbol. The Yen symbol was redefined (simplified) by the American National Standards Institute Technical Committee for OCR in conjunction with the Japanese Industrial Standards Committee on OCR.

Implementation. The earlier version of this standard (FIPS PUB 33) became effective on October 1, 1974. This new edition becomes effective on the date of its announcement in the **Federal Register**

Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute). When ordering, refer to Federal Information Processing Standards Publication 33–1 (FIPS PUB 33–1), and title. Payment may be made by check, money order, purchase order, credit card, or deposit account.

[FR Doc. 29054 Filed 11–2–84; 8:45 am]

BILLING CODE 3510–13–M

COPYRIGHT ROYALTY TRIBUNAL

[Docket No. 84–2]

Declaration of Controversy Concerning Distribution of 1983 Jukebox Royalty Fees

In accordance with 17 U.S.C. 116(c)(3), the Copyright Royalty Tribunal (Tribunal) declares the existence of a controversy concerning the distribution of royalty fees paid for 1983 performances of certain musical works by means of coin-operated phonorecord players (jukeboxes).

The Tribunal has been informed by ASCAP, BMI and SESAC of a partial agreement concerning the distribution of the 1983 jukebox fees. Other claimants are the Latin American Music Co., the Italian Book Corporation, and Michael Walsh.

The Tribunal directs all claimants to submit any evidence to be considered by the Tribunal in the distribution of the jukebox royalty fees before December 4, 1984. Such evidence shall be addressed to the Chairman, Copyright Royalty Tribunal, 1111 20th Street, NW., Suite 450, Washington, D.C. 20036.

Dated: October 30, 1984.

Edward W. Ray,

Acting Chairman.

[FR Doc. 84–29067 Filed 11–2–84; 8:45 am]

BILLING CODE 1410–01–M

DEPARTMENT OF ENGERY

Office of the Secretary

Determination To Establish; National Coal Council

Pursuant to the Federal Advisory Committee Act (Pub L. 92–463), I hereby certify that the establishment of the National Coal Council is necessary and in the public interest in connection with the performance of duties imposed on the Department of Energy by law. This determination follows consultation with the Committee Management Secretariat of the General Services Administration, pursuant to 41 CFR 101–6. 10.

The purpose of the committee is to provide advice on a continuing basis to the Secretary of Energy on general policy matters relating to coal, including:

a. Federal policies which affect, directly or indirectly, the production, marketing, and use of coal;

b. Plans, priorities, and strategies to address more effectively the technological, regulatory, and social impact issues relating to coal production and use;

c. Appropriate balance between various elements of federal coal-ralated programs;

d. Scientific and engineering aspects of coal technologies, including emerging coal conversion, uitilization, or environmental control concepts;

e. The progress of coal research and development, pursuant to the Office of Coal Research Act, Pub. L. 86–599.

Nominations of candidates for membership on the National Coal Council are being requested by the U.S. Department of Energy. Membership will include a broad range of coal-related interests including, but not limited to, coal producers, sellers, transporters, users, research organizations, environmental/conservation organizations, equipment manufacturers, state and local governments, legal and financial interests, and labor organizations. Nominations should

include the name and title of the nominee and a summary of the individual's background or responsibilities which warrant his/her consideration for membership on the National Coal Council. Nominations should be submitted by November 30, 1984, to: Secretary of Energy, U.S. Department of Energy, 1000 Independence Avenue, Washington, D.C. 20585.

Further information concerning the National Coal Council can be obtained from Gloria Decker (202) 252-8990.

Dated: October 31, 1984.

K. Dean Helms,

Advisory Committee Management Office.

[FR Doc. 84-28899 Filed 11-2-84; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Near Term Intertie Access Policy

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Near Term Intertie Access Policy. *BPA File No.* IAP-1.

SUMMARY: BPA has adopted a Near Term Intertie Access Policy to enhance its Power Marketing Program and to provide certainty with respect to firm and nonfirm transactions that may occur on the Federally owned portion of the Pacific Northwest-Pacific Southwest Intertie (Pacific Intertie).

The initial Near Term Intertie Access Policy is in effect for approximately 6 months. During this 6-month period, environmental analyses of the Policy will be conducted and operational experience with the Policy will be gained. Further opportunities for public comment on proposed revisions to the initial Policy also will be provided. Based on these comments, the results of the environmental analyses, and the operating experience, the Near Term Policy may be revised at the end of the 6-month period. The revised Policy then will be adopted for the remaining approximately 18 months. The Near Term Policy will be followed by a Long Term Intertie Access Policy.

Responsible Official: James L. Jones, Deputy Power Manager.

DATES: The Near Term Intertie Access Policy was effective as of September 14, 1984. Meeting dates and further comment opportunities will be announced.

ADDRESSES: Written comments should be submitted to the Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Ms. Donna L. Geiger, Public Involvement Manager, at the address listed above, 503-230-3478. Oregon callers may use 800-452-8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800-547-6048. Information may also be obtained from:

Mr. Geroge Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503-230-4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503-687-6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-456-2518

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509-662-4377, extension 379.

Mr. Richard D. Casad, Puget Sound Area Manager, 415 First Avenue North, Room 250, Seattle, Washington 98109, 206-442-4130.

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509-522-6226.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208-523-2706.

Mr. Frederic D. Rettenmund, Boise District Manager, Owyhee Plaza, Suite 245, 1109 Main Street, Boise, Idaho 83707, 208-334-9137.

SUPPLEMENTARY INFORMATION:

I. Background

A. Policy Development Process to Date

The development of BPA's Intertie Access Policy has been an extensive process. It commenced on July 22, 1983, with publication in the **Federal Register** of a Notice of Intent to Develop Intertie Policy (48 FR 33515). This notice was provided consistent with BPA's "Major Power Marketing Policy Procedures" (May 12, 1981, 46 FR 26368). In response to that notice, BPA met with numerous organizations and interest groups to identify, discuss, and seek advice on the issues that must be resolved by an access policy. BPA received 55 comments in response to the July 22 notice. These comments and advice generated a Discussion Paper that was published in the **Federal Register** on February 16, 1984, with a request for comments from the public (49 FR 5990). This Discussion Paper described possible BPA policies for use of the Pacific Intertie by BPA and others within existing contractual obligations. BPa received 76 written comments in response to the Discussion Paper and held informal meetings with customer and public interest groups.

The Administrator considered the comments on the Discussion Paper in the context of BPA's own efforts to resolve basic access priority issues given the current Pacific Northwest power surplus of firm and nonfirm power. The Administrator concluded that a multi-staged policy development was appropriate. This Near Term Intertie Access Policy is the first stage of that policy development.

B. Record of Decision Available

BPA has prepared a Record of Decision evaluating the record of the proposed Near Term Intertie Access Policy and the Administrator's decisions on the issues identified with the record. This Record of Decision is available on request from BPA at the locations listed in the addresses section of this notice.

This document presents BPA's evaluation of the record of the proposed Near Term Intertie Access Policy and the Administrator's decisions on the issues identified within the record. The record on which this Record of Decision is based consists of the comments received on BPA's proposed policy issued on July 13, 1984, and published in the **Federal Register** on July 30, 1984 (49 FR 30098); the comments made at the public comment forums; any previous comments specifically incorporated by reference by the commenters; and related documents.

The Record of Decision is divided into four major sections: (1) Introduction, addressing the purpose of the Policy, the process used to develop the Policy, and BPA's legal authorities to implement the Policy; (2) Preliminary issues, describing the context of the Policy within BPA's other actions and responsibilities and the pervasive concepts embodied within the Policy; (3) Conditions for Access, describing the overall standards the Policy applies to determine whether access to the Intertie will be provided for a particular resource or arrangement; and (4) Firm Contracts and Formula Allocation Methods, discussing the specific operative elements of the Policy that are necessary to allocate access to the Pacific Intertie. Within each section, the appropriate comments are grouped by topic into issues. The issues are divided into three sections: (1) A summary of comments on the issue; (2)

an evaluation of the comments that discusses the various arguments on the issue and BPA's evaluation of those arguments; and (3) the decision that explains the Administrator's decision on the issue as reflected in the Policy as adopted.

C. Process Remaining

The initial Near Term Intertie Access Policy is in effect for approximately 6 months. During this 6-month period, environmental analyses of the Policy will be conducted and operational experience with the Policy will be gained. Further opportunities for public comment on proposed revisions to the initial Policy also will be provided. Based on these comments, the results of the environmental analyses and the operating experience, the Near Term Policy may be revised at the end of the 6-month period. The revised Policy then will be adopted for the remaining approximately 18 months. The Near Term Policy will be followed by a Long Term Intertie Access Policy.

The Long Term Intertie Access Policy is necessary because separate questions are raised regarding the interrelationship of Intertie access priorities to long term firm power transaction, to new Intertie facilities development, and to new resource development. These longer term questions require consideration of different issues and involve different potential impacts. These issues militate for additional features of an access policy and require additional policy development. The Near Term Intertie Access Policy by comparison, will resolve immediate, more discrete access issues that result from the present power surplus.

BPA expects to commence scoping an environmental analysis of the Long Term Policy during the Fall of 1984. BPA anticipates that, because of possible implications for future resource development, the Long Term Intertie Access Policy may require an environmental impact statement. The environmental statement could take as long as 2 years to complete.

II. Discussion

A. Reason for Action

BPA adopts this Near Term Intertie Access Policy in order to enhance BPA's power marketing program and to provide certainty with respect to firm and nonfirm transactions which may occur on the Federally owned portions of the Pacific Intertie. Specifically, BPA's policy accomplishes several important purposes. First, BPA's Policy assures that BPA has use of its portion of the Pacific Intertie as necessary for BPA's power marketing program. Second, BPA must consider the financial impacts of Pacific Intertie usage on BPA's ability to recover adequate revenues. In this regard, BPA's Policy enhances BPA's ability to recover revenue that otherwise would be lost if BPA failed to manage prudently its portion of the Pacific Intertie. Third, BPA's Policy responds to the recent influx of requests for more space on the Pacific Intertie than there is available capacity. BPA's Policy fosters increased certainty in power sales between BPA, Pacific Northwest utilities, and Pacific Southwest utilities.

1. Power Marketing Program

BPA faces various marketing and operating constraints, including firm load requirements, limited intertie capacity, Pacific Northwest Coordination Agreement requirements, Exportable Agreement requirements, and various nonpower requirements for flood control, flows for fish enhancement, and the like. Within these constraints, BPA seeks to achieve the production and marketing of an optimal amount of firm and nonfirm energy. The Pacific Intertie plays a key role in BPA's power marketing program. BPA's ability to market its firm and nonfirm energy over the Pacific Intertie has a direct relation to BPA's fiscal integrity.

Among the most important reasons Congress authorized construction of the Pacific Intertie are the following: (1) The Pacific Northwest could sell surplus energy the the Pacific Southwest in order to raise revenues and displace more expensive Pacific Southwest energy; (2) each region could help the other to meet peak loads; (3) Pacific Southwest energy could be used to firm up Pacific Northwest power; and (4) a market for surplus hydro peaking capacity of Federal Pacific Northwest dams could be developed. Pacific Intertie planners were also aware that uses of the Pacific Intertie would vary over the years and that the requirements of the Government could not be set forth in complete detail with exact figures during hearings on intertie authorization. Congress did anticipate, however, that the benefits of the Pacific Intertie would be shared approximately equally between the Pacific Northwest and the Pacific Southwest.

2. Revenue Impacts

BPA is a self-financed Federal agency, and as such is required to raise sufficient revenues through rates charged for power and transmission services to pay all of its costs, including the amortization of the large Federal investment in the Federal Columbia River Power System (FCRPS). One of the major criteria by which Congress measured the desirability of the Pacific Intertie was that BPA would receive substantial revenue from the sale and exchange of surplus capacity and energy in order to keep BPA rates low. Consequently, Pacific Northwest consumers would benefit by having some system costs recovered from sales that otherwise could not be made.

BPA's market in California primarily serves to displace expensive oil and gas fired generation. Recently, this displacement has occurred predominantly in the form of economy energy transactions involving Pacific Southwest purchases of Pacific Northwest energy under nonfirm energy rate schedules. In economy energy transactions, the buyer obtains less expensive energy from another utility instead of operating its own resource. Economy energy transactions increase the operating efficiency of both buyer and seller systems. The buyer can reduce costs of generation. The seller obtains revenues from capacity that otherwise would have been unproductive. Consequently, Pacific Southwest consumers benefit from the savings that result when lower cost Pacific Northwest energy is substituted for higher cost thermal generation.

The distribution of benefits in an economy energy transaction is measured by comparing the money saved by the purchaser with the revenues received by the seller. The goal in such transactions is to share equitably the benefits. A comparison of the Pacific Southwest savings with the revenues received by BPA demonstrates that recently there has not been an equitable sharing of economy energy benefits. BPA has been selling economy energy at rates well below its nonfirm energy Standard Rate and at a fraction of the decremental costs of Pacific Southwest utilities. As a result, rates to all other Federal power users have been higher.

In addition to a supply of nonfirm energy, BPA presently has firm resources surplus to BPA's existing firm loads. Some Pacific Northwest utilities are in a similar surplus condition. Both BPA and other Pacific Northwest utilities are seeking ways to market their surplus firm resources under long term sales agreements. To the extent BPA is unsuccessful in its efforts, the output of these resources is often sold under nonfirm energy rate schedules which fail to recover the full costs of these resources. Again, the result is that rates

to all other Federal power users have been higher.

3. Demand for Firm Intertie Access

Currently, there is more demand for use of the Pacific Intertie than ever before, not just by BPA, but by other Pacific Northwest utilities and nonutility developers. There is much more energy available for sale to the Southwest than Pacific Intertie capacity.

This energy is available for sale on both a nonfirm and firm basis. It has become necessary, because of competing and increasing demand for use of the Pacific Intertie, for BPA to develop an Pacific Access Policy. The Policy will provide the basis for predictable business transactions. Absent this predictability, BPA risks substantial interference with its power marketing program, and it will become increasingly difficult for the Pacific Northwest to market its surplus to the Pacific Southwest on a firm basis. BPA is now adopting a Near Term Intertie Access Policy that will serve the needs of BPA's own power marketing program and the needs of Pacific Nothwest and Pacific Southwest utilities.

B. Overview of Policy

Under the Near Term Intertie Access Policy, BPA will provide near term intertie access to other Pacific Northwest scheduling utilities while retaining the necessary right to make use of the Pacific Intertie to implement BPA's Power Marketing Program. BPA will accomplish these tasks by: (1) Providing for uses of the Pacific Intertie necessary to implement agreements in support of BPA's Power Marketing Program and operational needs; (2) providing for assured delivery of qualifying firm sales by BPA or other Pacific Northwest utilities; and (3) allocating access to remaining Pacific Intertie capacity among BPA and other utilities.

Both existing and new contracts for the sale of firm power from existing Pacific Northwest resources may qualify for assured delivery. Nonfirm intertie access may be provided for extraregional resources and utilities when Pacific Northwest supply does not meet or exceed Pacific Intertie capacity.

Certain considerations are integral to the near term Policy. Of particular concern are: (1) The relationship between the Policy and the BPA's Power Marketing Program; (2) assured delivery for qualifying existing and new contracts; (3) treatment of extraregional resources, and (4) fish and wildlife provisions. Each of these considerations is briefly addressed below. A more complete explanation of these considerations is provided in the Record of Decision.

1. Relationship to Administrator's Power Marketing Program

The Policy assures that Pacific Northwest utilities obtain fair and equitable access to the Pacific Intertie without significant adverse impact on BPA's power marketing program. The Policy also assures that BPA has access to a portion of its own intertie capacity on a continuing basis. BPA can then make economy energy sales to the Southwest at reasonable prices. If BPA can have a reasonable expectation of selling its firm surplus and nonfirm energy at established rates, its power marketing program will experience minimal interference.

2. Assured Delivery for Qualifying Existing and New Firm Contracts

The Policy will provide assured delivery for existing and new firm contracts. The criteria for qualifying firm contracts are intended to limit the availability of assured delivery to those sales that are not merely advance arrangements to purchase economy energy and that do not adversely impact the Administrator's obligation to operate in a prudent utility manner.

3. Treatment of Extraregional Resources

This Near Term Intertie Access Policy provides priority intertie access to utilities in the Pacific Northwest. During periods when intertie capacity is insufficient to meet all Pacific Northwest requests for capacity, the Pacific Intertie will be allocated only among Pacific Northwest utilities. Under such circumstances, if the Exportable Agreement in not in effect, BPA may, by contract, provide extraregional utilities limited Intertie access. Such access, however, would be conditioned either on such utilities' participation in the Pacific Northwest's coordinated planning and operation to a greater extent than in the past or on agreement to provide other appropriate consideration of value to the Pacific Northwest. During periods when the capacity of the Pacific Intertie is greater than the requests from Pacific Northwest utilities, Intertie capacity in excess of the need to serve Pacific Northwest utilities will be made available to transmit energy from extraregional resources.

4. Fish and Wildlife Provisions

The fish and wildlife provisions contained in the Near Term Intertie Access Policy are intended to assure that the Policy will neither enable nor encourage resource construction or operation that would decrease the effectiveness of or increase the need for expenditures or other actions by the Administrator to protect, mitigate, and enhance fish and wildlife. These provisions provide a means to mitigate any adverse effects to the Adminstrator's efforts on behalf of fish and wildlife which might result from the operation of resources scheduled on the Pacific Intertie.

II. Near Term Intertie Access Policy

A. Definitions

1. "Administrator" means the Administrator of BPA and is used interchangeably herein with BPA.

2. "Administrator's Power Marketing Program, The" or "BPA's Power Marketing Program" means the aggregate of BPA's power marketing actions taken and policies developed to fulfill BPA's statutory obligations and policy directives. These actions and policies are based on the exercise of broad authority to act, consistent with sound business principles, to recover adequate revenue to repay the Federal investment in the Federal system while, at the same time, encouraging the widest possible diversified use of electric power at the lowest possible rates for BPA customers. BPA's Power Marketing Program includes the Administrator's obligation to meet his power supply obligations in the Pacific Northwest and to market surplus power in the Pacific Northwest in a manner that assures an adequate, reliable, economical, efficient, and environmentally acceptable power supply, while preserving regional and public preference to Federal electric power, and maintaining BPA's present and future rates to all customers at the lowest level possible consistent with sound business principles. BPA's Power Marketing Program also includes the Administrator's objectives to market surplus Federal power to the Southwest utilities at equitable prices under rates adopted pursuant to section 7(i) of the Pacific Northwest Power Act and to assist in the marketing of the region's surplus firm power to the Southwest.

3. "Assured Delivery" means Intertie transmission service provided by BPA under this policy that is only interruptible as a result of Uncontrollable Forces.

4. "BPA Resources" means Federal Columbia River Power System (FCRPS) hydroelectric projects; resources acquired by the Administrator under long term contracts in force on the effective date of enactment of the Pacific Northwest Power Act; Exchange Resources consisting of electric power

purchased under section 5(c) of the Pacific Northwest Power Act; and resources acquired by the Administrator under contracts in force on the effective date of this Policy.

5. "Entity" means an owner of a resource other than a Scheduling Utility.

6. "Existing Extraregional Resources" are those resources located outside the Pacific Northwest which are operational on the effective date of this Policy, other than extraregional resources which qualify as Existing Pacific Northwest Resources.

7. "Existing Pacific Northwest Resources" means the regional resources of Pacific Northwest utilities that are operational on the effective date of this Policy, the extraregional resources of Pacific Northwest utilities dedicated to regional load on the effective date of this Policy, and the regional resources of other Pacific Northwest Entities that are operational and for which relationships with Scheduling Utilities to serve regional load have been established on the effective date of this policy. Existing Pacific Northwest Resources do not include BPA Resources.

8. "Intertie Capacity" means transmission capacity on the Pacific Intertie controlled by BPA through ownership or contract right, increased by electric power scheduled South to North and decreased by loop flow, outages, and other factors that reduce transmission capacity from North to South.

9. "Pacific Intertie" means the Pacific Northwest-Pacific Southwest Intertie that consists of three high-voltage transmission lines (two 500-kilovolt (kV) alternating current (ac) lines and one 800-kV direct current (dc) line) which extend from Oregon into California or Nevada and any additions thereto.

10. "Pacific Northwest" means, as defined in the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839e (Pacific Northwest Power Act), the area consisting of the States of Oregon, Washington, and Idaho, the portion of the State of Montana west of the Continental Divide, and such portion of the States of Nevada, Utah, and Wyoming as are within the Columbia River Drainage Basin, and any contiguous areas, not in excess of 75 air miles from the area referred to above, which are a part of the service area of a rural electric cooperative customer served by the Administrator on the effective date of the Pacific Northwest Power Act which has a distribution system from which it serves both within and without such region.

11. "Scheduling Utilities" means BPA, those utilities that operate generation control areas within the Pacific Northwest, and those utilities within BPA's generation control area that schedule with BPA and are designated as Computed Requirements customers.

12. "Substantial increase" or "substantial decrease," or "substantially interfere" means a change that is of qualitative significance, of significant measurable effect, or of sufficient magnitude to require remedial action.

13. "Uncontrollable Forces" are defined in General Wheeling Provisions, GWP Form-4R.

B. Term

This Policy is effective on September 7, 1984, and will terminate on March 1, 1985, unless extended by published notice. Scheduling pursuant to this Policy shall commence on the date specified in a written notice from BPA to other Scheduling Utilities.

C. Conditions for Intertie Access

1. The Administrator will provide Assured Delivery or will allocate available Intertie Capacity to BPA and to other Scheduling Utilities pursuant to the conditions and procedures for scheduling and allocations set forth in this policy, unless otherwise provided by the terms of existing contracts listed in subsection D.1.a., below. An Entity that desires access to the Pacific Intertie may request access through the Scheduling Utility in whose control area the Entity's resource is located.

2. The Administrator will provide Assured Delivery or allocate available Intertie Capacity only for power from BPA Resources and Existing Pacific Northwest Resources, except to the extent that Existing Extraregional Resources are permitted access under this Policy.

3. Subject to reserving Intertie Capacity otherwise required by the Administrator to support his Power Marketing Program, the Administrator will provide Assured Delivery or allocate Intertie Capacity for an Existing Pacific Northwest Resource or an Existing Extraregional Resource only when providing such Intertie access:

a. Will not substantially interfere with:

(1) The Administrator's Power Marketing Program; or

(2) The operating limitations of the Federal system; and

b. Will not conflict with:

(1) The Administrator's existing contractual obligations; or

(2) Any other legal obligations of the Administrator; and

c. Will not result in scheduling of energy from resources whose operation will adversely impact fish and wildlife in a manner that results in a substantial decrease in the effectiveness of, or a substanial increase in the need for expenditures or other actions by the Administrator to protect, mitigate, or enhance fish and wildlife; or otherwise substantially interferes with the obligations of the Administrator under the Pacific Northwest Power Act to adequately protect, mitigate, or enhance fish and wildlife, including taking into account at each relevant stage of decisionmaking processes to the fullest extent practicable the fish and wildlife program adopted by the Northwest Power Planning Council pursuant to the Pacific Northwest Power Act.

4. Operating limitations on the Federal Columbia River Power System (FCRPS), which includes the Federal power and transmission systems, result from the Administrator's obligation to operate the FCRPS in an economical and reliable manner consistent with prudent utility practices. These operating limitations include, but are not limited to:

a. The BPA Reliability Criteria and Standards;

b. Western System's Coordinating Council (WSCC) Minimum Operating Reliability Criteria;

c. North American Electric Reliability Council-Operating Committee Minimum Criteria for Operating Reliability;

d. The limitations that result from the Administrator's coordination with other utilities and Federal agencies regarding resource and river operations.

5. The Administrator's existing contractual obligations include, but are not limited to:

a. Current contracts numbered 14-03-73155, 14-03-55063, 14-03-56379, 14-03-79101, DE-MS79-81BP90185, DE-MS79-84BP91627, 14-03-54132, 14-03-53290, 14-03-53295, 14-03-50323, 14-03-54134, 14-03-53297, 14-03-58638, 14-03-54126. Section D below describes how BPA will implement its Assured Delivery and allocation procedures to avoid conflict with these contracts.

6. To verify consistency with this policy, upon the Administrator's request, Scheduling Utilities and extraregional utilities that are requesting or have received Assured Delivery or a formula allocation, shall provide the Administrator with a list of resources that are to be operated or that were operated at such hours as access to the Pacific Intertie will be or was provided, and such other information as the Administrator may reasonably need to implement the Policy. BPA will make such information available to the public to the extent it is not protected from disclosure by law.

7. Special provisions relating to fish and wildlife.

a. This Policy presumes that BPA Resources, Existing Pacific Northwest Resources, and Existing Extraregional Resources are being operated consistent with applicable licenses, permits, or other provisions of State and Federal law, and that the operation of these resources or providing access for these resources will not adversely impact fish and wildlife resources in a manner described in subsection C.3.c. (conditions for Intertie access), above, unless the Administrator determines otherwise.

b. Any interested person who wishes to challenge the presumption that an Existing Pacific Northwest Resource or Existing Extraregional Resource is being operated consistent with applicable licenses, permits, or other applicable provisions of State and Federal law must make that challenge with the State or Federal agency responsible for regulation of the resource or administration of that law.

c. Any interested person who wishes to challenge the presumption that the operation of an Existing Pacific Northwest Resource or Existing Extraregional Resource will not adversely impact fish and wildlife in the manner described in subsection C.3.c., above, shall notify the Administrator in writing. The notification shall state the manner in which and the extent to which fish and wildlife are being adversely impacted. The Administrator will provide a copy of that notification to the Scheduling Utility, to any other owner or operator of the resource, and to State and Federal agencies responsible for regulation of the resource or administration of applicable law, and accept public comment before making a determination whether fish and wildlife are being adversely impacted by the operation of the challenged resource.

d. Upon receipt of a determination by the relevant agency, under paragraph b. above, that a resource is not in compliance with applicable licenses or permits or other applicable State or Federal law, and a determination by the Administrator under paragraph c. above, that operation of the resource will adversely impact fish and wildlife resources in the manner described in subsection C.3.c., above, the Administrator will not provide access to the Pacific Intertie for that resource.

e. For a resource that is being operated in compliance with applicable licenses or permits and other applicable State or Federal law, but that the Administrator determines will adversely impact fish and wildlife in the manner described in subsection C.3.c., above, the Administrator will not provide access unless:

(1) The owner or operator of the resource agrees to modify the operation of the resource in a manner to assure that the operation of the resource will not have the adverse impact determined by BPA; or

(2) The owner or operator of the resource agrees to make expenditures or take other actions not inconsistent with the program adopted by the Northwest Power Planning Council to protect, mitigate, or enhance fish and wildlife to offset the adverse impact to fish and wildlife described in subsection C.3.c. above.

f. It is the Administrator's intent that the Long Term Intertie Access Policy will not provide access to Intertie Capacity under that Policy for resources that are not included in the definition of Existing Pacific Northwest Resources under this Near Term Policy, if construction or operation of these resources will adversely impact fish and wildlife resources in the manner described in subsection C.3.c. above.

D. Assured Delivery and Formula Allocation Methods for Intertie Access

1. Assured Delivery for Firm Contracts

a. BPA will continue to use Intertie Capacity to perform its obligations under the following BPA contracts:

(1) Portland General Electric Contract No. 14–03–55063 providing annual Pacific Intertie priority access rights;

(2) Pacific Power & Light Contract No. 14–03–56379 providing annual Pacific Intertie priority access rights;

(3) Washington Water Power's transmission Contract No. 14–03–79101;

(4) Washington Water Power's transmission Contract No. DE–MS79–81BP90185;

(5) Western Area Power Administration Contract No. DE–MS–79–84B91627 for the purchase of surplus firm power from BPA and transmission of power purchased from the Basin Electric Power Cooperative;

(6) Pacific Gas & Electric (PG&E) Contract No. 14–03–54132 for the purchase of BPA's seasonal surplus capacity;

(7) BPA's Capacity/Energy Exchange Agreements, listed below:

Utility	Contract No. (14-03-)
(a) Burbank	53290
(b) Glendale	53295
(c) Los Angeles	50323
(d) Pasadena	53297
(e) PG&E	54134
(f) SDG&E	58638
(g) SCE	54126

(8) BPA's sale to PG&E confirmed by letter dated July 31, 1984; and

(9) New BPA contracts for which BPA claims Assured Delivery. BPA will give notice to Scheduling Utilities of such transactions.

b. For existing or new contracts of a Scheduling Utility other than BPA, Assured Delivery may be provided for a term not to extend beyond July 1986 to the extent that such contract:

(1) Meets the conditions of section C (conditions for Intertie access) above; and

(2) Provides for the sale of firm power from specified resources by a Scheduling Utility other than BPA in which the amount of power to be delivered, the price, and terms for delivery are specified in a manner that assures that the contract is not merely an advance arrangement to sell nonfirm power; and

c. BPA will consider the following factors among others, to determine the extent to which a contract of a Scheduling Utility other than BPA can receive assured Delivery:

(1) The extent to which the selling price is subject to change based on day-to-day fluctuation in market price;

(2) The extent to which the sale does not increase the costs to the Administrator of Exchange Resources; and

(3) The extent to which the buyer has the right to displace purchases under the contract with nonfirm energy.

d. Scheduling Utilities other than BPA desiring to arrange for Assured Delivery for a contract must submit such contract to the Administrator. The Administrator shall determine whether the submitted contract meets the eligibility criteria set forth above, and will provide notification of this determination in writing specifying the amount and term of Assured Delivery to be provided for the contract. BPA will use its best efforts to notify the Scheduling Utility by mail of the determination not later than 20 days from the date BPA receives the contract.

e. In order to receive Assured Delivery under a contract, firm hourly schedules must be established by the Pacific Northwest and Southwest parties,and be made available to BPA prior to allocation of Intertie Capacity. In no case will Assured Delivery be provided for PBA's or for a Scheduling Utility's total eligible contracts on any hour that exceeds BPA's or the

Scheduling Utility's average firm energy surplus as shown in Exhibit B of this Policy, as modified or revised from time to time.

f. A Pacific Northwest utility may increase its average firm energy surplus by purchasing surplus firm power from BPA or any Pacific Northwest utility. BPA will adjust the average firm surplus amounts shown in Exhibit B for the buying and selling utilities accordingly.

g. When BPA firm deliveries and Assured Deliveries of other Scheduling Utilities exceed the available Intertie Capacity as determined by BPA, the Pacific Northwest and Southwest parties will establish schedules for delivery.

2. Formula Allocation Methods

a. BPA will determine the Intertie Capacity available for formula allocations described in subsection b. below, after first taking into account the conditions for Interie access specified in section C above, the Intertie Capacity necessary to serve contractual obligations as described in subsection D.1.a. (Assured Delivery for Firm Contracts) above, and the Intertie Capacity necessary to provide Assured Delivery for qualifying firm contracts as described in subsection D.1.b. above. Access to the remaining available Intertie Capacity will be allocated according to the formulae described below.

b. One of three formulae will be applied depending on which of the following three conditions exists:

(1) *Condition 1.* When Exportable Energy is being scheduled pursuant to the terms of the Exportable Agreement (BPA Contract No. 14–03–73155), then capacity will be allocated pursuant to the Exportable Agreement. An example of an allocation under Condition 1 is shown in Exhibit A. The allocation procedure of the Exportable Agreement is an existing contractural obligation and has not been changed as a result of the Intertie Access Policy development process.

(2) *Condition 2.* When the Exportable Agreement allocation formula is not in effect, but BPA and other Scheduling Utilities declare amounts of power available for access to the Pacific Intertie that exceed the available Intertie Capacity determined as described in paragraph a. above, the capacity will be allocated pursuant to the following procedure:

(a) On any day the Scheduling Utilities observe as a normal workday, each Scheduling Utility shall submit to BPA declarations of daily quantities of energy and hourly capacity it has available for sale to the Southwest for the period beginning at midnight of the day of declaration and continuing through midnight of the next normal workday.

(b) Allocations for each hour among Scheduling Utilities will be determined and will approximate the ratio of each Scheduling Utility's declaration to the sum of all declarations for each hour multiplied by the available Intertie Capacity. An example of an allocation under Conditions 2 is shown in Exhibit A.

(3) *Condition 3.* When the Exportable Agreement is not in effect, but when BPA and other Scheduling Utilities declare power available for access to the Intertie in an amount that does not exceed the available Intertie Capacity, BPA's and each other Scheduling Utility's allocation will be equal to its declaration. An example of an allocation under Condition 3 is shown in Exhibit A.

E. Extraregional Access

Extraregional utilities will be allowed access as follows:

1. BPA will not provide Assured Delivery to extraregional utilities.

2. Under Condition 1, the Exportable Agreement precludes a formula allocation of Intertie Capacity to potential users that are not parties to that agreement.

3. BPA may, by contract, provide extraregional utilities limited access to Intertie Capacity under Condition 2. Such access, however, would be conditioned on such utilities' participation in the Pacific Northwest's coordinated planning and operation to a greater extent than in the past or agreement to provide other appropriate consideration of value to the Pacific Northwest.

4. Under Condition 3, extraregional utilities will be able to use Intertie Capacity to the extent that capacity is available in excess to the declaration of Scheduling Utilities.

F. Remedies

1. Access to Intertie Capacity is conditioned upon compliance with the terms of this Policy.

2. Upon a determination by BPA that the terms of this Policy are not being met, BPA will so notify the appropriate person(s) setting forth the nature of the noncompliance and the action(s) that may be taken to achieve compliance.

3. BPA will provide a reasonable opportunity to correct such noncompliance before imposing a remedy. BPA may impose a prospective remedy to account for actions already taken that were not in compliance with this Policy.

4. BPA may fashion and impose an appropriate remedy for noncompliance. Remedies that BPA may impose include, but are not limited to:

a. denial of access for a resource;
b. refusal to accept schedules; or
c. reduction in future allocations.

G. Exhibits

Exhibit A and Exhibit B are a part of this Policy.

Issued in Portland, Oregon, on October 22, 1984.

Peter T. Johnson,
Administrator.

Exhibit A—Example of Formula Allocation Under Condition 1

Assumptions Used in This Example

1. There is sufficient energy to load the potential Intertie capacity at 18.5 mills/kWh of less.
2. Declarations of available energy are hourly.
3. Some utilities have firm contracts.
4. Some utilities have priorities.
5. Potential Intertie capacity equals 5,800 MW.
6. Extraregional utilities are not able to declare or receive an allocation in this condition.

Example of an Hourly Declaration and Allocation

(1)	Firm (2)	Non-firm declaration (3)	Non-firm allocated (4)	Total allocated (5)	Restore (6)	Non-firm allocated (7)	Final allocated (8)
BPA	500	3,000	2,635	3,135		2,635	3,135
IOU_1	200	1,000	878	1,078	878 / 1,985 × 60	851	1,051
IOU_2	40	960	843	883	843 / 1,985 × 60	818	858
PGE_3		500	440	440	1,985 + 60	500	500
PA_1	0	100	88	88	88 / 1,985 × 60	85	85
PA_2	0	200	176	176	176 / 1,985 × 60	171	171
Total	740	5,760	5,060	5,800	1,985		5,800

Description:

Column 1=Utility that is declaring energy for the allocation procedure.
Column 2=The amount of firm energy each utility will deliver, as specified prior to allocation of nonfirm energy.
Column 3=Each utility's total hourly nonfirm energy declaration.
Column 4=The initial allocation of the potential nonfirm Intertie capactiy.
Column 5=The initial total allocation of intertie capacity (5,800 MW).
Column 6=The reallocation that is required because of Portland General Electric's priority to the Interties. NOTE:—BPA does not share in these pro rata reductions necessitated by enactment of priority rights.
Column 7=The final nonfirm allocation of the potential nonfirm Intertie capacity.
Column 8=The final total allocation of the potential Intertie capacity (5,800 MW).
After the final allocation for each hour of the preschedule day or days is determined, Pacific Northwest utilities would be informed of their allocation and would either negotiate sales at other than the 18.5 mills/kWh price or be combined with BPA's allocation at 18.5 mills/kWh and receive a pro rata share of BPA sales.

Example of Formula Allocation Under Condition 2

Assumptions Used in This Example

1. Hourly energy available at 18.5 mills/kWh or less within the region is not sufficient to cover the potential SW market.
2. The hourly energy available at any price is more than sufficient to cover the potential SW market.
3. Utah has other transmission paths and, therefore, will not participate.
4. Some utilities have firm contracts.
5. Potential SW market equals 5,800 MW.
6. No utility has a priority.

Example of the Hourly Declaration and Allocation

	Firm	NF decl.	NF alloc.	Total alloc.
(1)	(2)	(3)	(4)	(5)
BPA	500	2,000	1,350	1,851
IOU_1	200	1,300	877	1,077
IOU_2	40	1,960	1,323	1,363
IOU_3	700	0	0	700
PA_1	0	100	67	67
PA_2	0	200	135	135
IOU_4	0	900	607	607
Total	1,440	6,460	4,360	5,800

Description:
Column 1=Utility which is declaring energy for the allocation procedure.
Column 2=The amount of firm energy each utility will deliver, as specified prior to allocation of nonfirm energy.
Column 3=Each utility's nonfirm energy declaration.
Column 4=The initial allocation of the potential nonfirm market.
Column 5=Total allocation (nonfirm + firm) of the 5,800 MW potential market.

Example of Formula Allocation Under Condition 3

Assumptions Used in This Example

1. Energy available at any price is not sufficient to cover the potential market (excludes BCH and WK).
2. The potential market equals 5,800 MW.
3. Some utilities have firm contracts.
4. No intertie priorities remain.

Example of the Hourly Declaration and Allocation

	Firm	NF declaration	NF allocation	Total allocation
(1)	(2)	(3)	(4)	(5)
BPA	500	0	0	500
IOU_1	200	800	800	1,000
IOU_2	40	1,460	1,460	1,500
IOU_3	700	0	0	700
PA_1	0	100	100	100
PA_2	0	200	200	200
IOU_4	0	500	500	500
Subtotal	1,440	3,060	3,060	4,500
BCH	0	2,400	1,200	1,200
WK	0	200	100	100
Total	1,440	5,660	4,360	5,800

Description:

Logic followed in columns 1-5, above, are the same as used in Condition 2, except that BCH and WK have been added. Their allocations are based upon the prorata distribution of the capacity remaining after first reducing the Intertie Capacity by the sum of the firm and NF Declarations for BPA and other scheduling utilitis. It is understood that the net interchange between BCH and BPA is limited to 2,000 MW.

Exhibit B

Utility	Average firm surplus [1]	Average firm surplus [1] August through December [2]
Bonneville Power Administration	1,473	2,651
Seattle City Light	0	0
Tacoma City Light	4	7
Grant County PUD	40	72
Douglas County PUD	0	0
Chelan County PUD	23	41
Pend Oreille PUD	0	0
Eugene Water and Electric Board	28	50
Cowlitz County PUD	3	5
Snohomish County PUD	0	0
Montana Power Company	3	5
Idaho Power Company	0	0
Pacific Power & Light Company	361	650
Portland General Electric Company	135	243
Puget Sound Power & Light	0	0
Utah Power & Light Company	0	0
Washington Water Power Company	53	95

[1] Except that in no operating year may a scheduling utility have Assured Delivery for more energy than the amount of Average Firm surplus shown in Column 1 times the number of hours in the operating year, and except that in the remainder of the 1984-85 operating year no scheduling utility may have Assured Delivery for more than the amount of Average Firm Surplus shown in Column 1 times 6936 hours.
[2] Except that in the months of November and December, when the Exportable Agreement is in effect, the Average Firm Surplus shall be the amount shown in Column 1.

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BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/28H; FRL-2710-1]

Preliminary Notice of Determination Against Registration of Pesticide Products Containing Creosote, Coal Tar, and Coal Tar Neutral Oil Registered for Non-Wood Preservative Uses; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended the period for submittal of comments in regard to the Preliminary Notice of Determination concluding the Rebuttable Presumption Against Registration of pesticide products containing creosote, coal tar, and coal tar neutral oil for non-wood preservation uses.

DATE: The comment period closes on December 21, 1984.

ADDRESS: Comments should be sent to and are available for review at: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: By mail:
Lois Rossi, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.
Office location and telephone number: Rm. 711, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. (703-557-7452).

SUPPLEMENTARY INFORMATION: On August 14, 1984, EPA issued a Preliminary Notice of Determination Concluding the Rebuttable Presumption Against Registration of Pesticide Products Containing Creosote, Coal Tar, and Coal Tar Neutral Oil for Non-wood Preservative Uses. This notice was published in the **Federal Register** of August 22, 1984 (49 FR 33328). The deadline for submitting comments in the notice was October 22, 1984. Requests for an additional 60 days in which to submit comments to EPA have been received from registrants and others who were affected by the determination. They have specified a need for additional time to respond to the risk/benefit analysis set forth in the August 22 notice.

The agency concludes that additional time would be beneficial to ensure the submission of complete and accurate responses to this notice of determination. Therefore, all registrants, applicants for registration, and other interested persons shall have until December 21, 1984 to submit comments or information. These submissions should be sent to the Document Control Officer at the address given above. All comments should bear the identifying notation "OPP-30000/28H." Comments received on or before December 21, 1984, will be considered before the agency decides to issue a notice of final determination. Comments received after December 21, 1984, shall be considered to the extent feasible. All written comments filed will be available for public inspection in the office of the Document Control Officer at the above address from 8 to 4 p.m. Monday through Friday, excluding legal holidays. See the August 22 notice for information on submitting confidential business information.

Dated: October 25, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 84-29046 Filed 11-2-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket Nos. 84-963 and 84-964; File Nos. BPCT-840604KF and BPCT-840723KK]

Albany Broadcasters, Inc., and Harold Yancy Edwards; Hearing Designation Order

In the matter of applications of Albany Broadcasters, Inc. (MM Docket No. 84-963, File No. BPCT-840604KF) and Harold Yancey Edwards (MM Docket No. 84-964, File No. BPCT-840723KK) for construction permit, Albany, Georgia.

Adopted: October 9, 1984

Released: October 26, 1984.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new commercial television station to operate on Channel 52, Albany, Georgia.

2. No determination has been reached that the tower height and location proposed by either applicant would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.[1]

3. Congress St. Properties and Colom Communications Corporation are each 45 percent stockholders of Albany Broadcasters, Inc. Section II, item 5(a), FCC Form 301, requires that Table I be completed for all parties to the application. We do not have Table I information regarding the principals of Congress St. Properties and Colom Communications Corp. § 73.3514(a) of the Commission's Rules requires applicants to provide all information called for by FCC forms, unless the information is inapplicable. Accordingly, appropriate issues will be specified to determine the identity and qualifications of the principals of Congress St. Properties and Colom Communications Corp. and to examine Albany Broadcasters, Inc.'s compliance with § 73.3514(a).

4. Section II, Item 10, FCC Form 301, inquires whether documents, instruments, agreements or understandings for the pledge of stock of a corporate applicant, as security for loans or contractual performance, provide that (a) voting rights will remain with the applicant, even in the event of default on the obligation; (b) in the event of default, there will be either a private or public sale of the stock; and (c) prior to the exercise of stockholder rights by the purchaser at such sale, the prior consent of the Commission (pursuant to 47 U.S.C. 310(d)) will be obtained. A negative response to this question requires a full explanation. Albany Broadcasters, Inc. answered "no" to item 10; however, the applicant did not submit the required explanation. Albany Broadcasters, Inc. will be required to submit its explanation to the presiding Administrative Law Judge within 20 days after this Order is released.

5. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience,and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

(1) To determine with respect to each of the applicants whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

(2) To determine with respect to Albany Broadcasters, Inc.:

(a) The identity and legal qualifications of the principals of Congress St. Properties and Colom Communications Corporation;

(b) Whether the applicant complied with § 73.3514(a) of the Commission's Rules; and

(c) In light of the evidence adduced pursuant to the foregoing issues, the effect of any omissions on the applicant's basic or comparative qualifications.

(3) To determine which of the proposals would, on a comparative basis, better serve the public interest.

(4) To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

7. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

8. It is further ordered, that Albany Broadcasters, Inc. shall submit its explanation for answering "no" to Section II, Item 10, FCC Form 301, January, 1982, to the presiding Administrative Law Judge within 20 days after this Order is released.

9. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

10. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 84-29033 Filed 11-2-84; 8:45 am]

BILLING CODE 6712-01-M

[1] Albany Broadcasters, Inc. was notified by the Federal Aviation Administration (FAA) to reduce its proposed antenna height to 394 feet above ground level. Albany Broadcasters must amend FCC Form 301 or refile with FAA.

[File Nos. BPH-830902AA, et al.; MM Docket Nos. 84-990; et al.]

Puopolo Communications, Inc., et al. Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city/State	File No.	MM Docket No.
A. Puopolo Communications, Inc.; Hyannis, MA.	BPH-830902AA	84-990
B. Radio Hyannis, Inc.; Hyannis, MA.	BPH-840104AE	84-991
C. L & D Broadcasting, Inc.; Hyannis, MA.	BPH-840105AF	84-992
D. Dunham Communications Corp.; Hyannis, MA.	BPH-840105AR	84-993
E. Fredissa Hamilton & Ronald D. Baptist, d/b/a Hyar Broadcasting; Hyannis, MA.	BPH-840105AS	84-994
F. Christine M. Ramirez, et al., d/b/a Cape Cod Broadcasters; Hyannis, MA.	BPH-840105AV	84-995
G. Hyannis Broadcasting Company; Hyannis, MA.	BPH-840105AW	84-996

Applicant, city/State	File No.	MM Docket No.
H. Mac's Communications, Inc.; Hyannis, MA.	BPH-840105AY	84-997
I. Hyannis and Cape Cod Broadcasting Company, Inc.; Hyannis, MA.	BPH-840105AZ	84-998

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, A, C, D, E, F
2. Comparative, A–I
3. Ultimate; A–I

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632–6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 84-29035 Filed 11-2-84; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket Nos. 84-961 and 84-962; File Nos. BPCT-840604KI and BPCT-840723KG]

Gary D. Terrell and Rita L. Young; Hearing Designation Order

In the matter of applications of Gary D. Terrell (MM Docket No. 84-961, File No. BPCT-840604KI), and Rita L. Young (MM Docket No. 84-962; File No. BPCT-840723KG) for construction permit Cumberland, Maryland.

Adopted: October 10, 1984.

Released: October 26, 1984.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new commercial television station to operate on Channel 65, Cumberland, Maryland.

2. The effective radiated visual power, antenna heights above average terrain and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the area and population which would be served by each of the proposals. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contours, together with the availability of other television service of Grade B or greatly intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to either of the applicants.

3. No determination has been reached that the tower height and location proposed by either applicant would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.[1]

4. The predicted service contour map submitted by Rita L. Young does not show all of the area within the contours. Ms. Young will be required to submit a new map showing all of the area within the predicted contours.

5. Section II, Item 8(b), FCC Form 301, inquires whether any member of the immediate family (i.e. husband, wife, father, mother, brother, sister, son or daughter) of any party to the application has any interest in or, connection with any other broadcast station or pending broadcast application. Ms. Young answered this question affirmatively. If an applicant's response to Item 8(b) is "yes", the applicant is required to submit an exhibit which includes a full disclosure concerning the persons involved, their relationship, the nature and extent of such interest or connection, the file number of such application, and the location of such station or proposed station. Ms. Young's attorney, in the cover letter to the application, states that Exhibit I, which contains the required disclosure, was inadvertently omitted from the application and would be submitted in the near future. To date, we have not received a copy of the exhibit. Accordingly, Ms. Young will be required to submit a copy of Exhibit I to the presiding Administrative Law Judge, within 20 days after this Order is released.

6. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

(1) To determine with respect to each applicant whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

(2) To determine which of the proposals would, on a comparative basis, better serve the public interest.

(3) To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

8. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

9. It is further ordered, that Rita L. Young shall submit a contour map showing all of the area within the predicted service contours, to the presiding Administrative Law Judge within 20 days after this Order is released.

10. It is further ordered, that Rita L. Young shall submit a copy of Exhibit I to her application to the presiding Administrative Law Judge, within 20 days after this Order is released.

11. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pusuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

12. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

[1]The Federal Aviation Administration (FAA) states that Gary D. Terrell has cancelled his notification to them. Mr. Terrell must refile FAA Form 7460.1 with the FAA immediately.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 84-29034 Filed 11-2-84; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket Nos. 84-972, et al.; Files Nos. BPHI-800905AE, et al.]

Reginald A. Fessenden Educational Fund, Inc. et al.; Hearing Designation Order

In the matter of applications of:

The Reginald A. Fessenden, Educational Fund, Inc. (98.1 MHz, Channel 251B, 28 kW (H&V), 195 m).	MM Docket No. 84-972; File No. BPHI-800905AE.
Ronald Kent Galon (98.1 MHz, Channel 251B, 28 kW (H&V), 195 m).	MM Docket No. 84-973; File No. BPHI-840725IA.
Pan-American Broadcasting Corporation (98.1 MHz, Channel 215B, 28 kW (H&V), 195 m).	MM Docket No. 84-974; File No. BPHI-840726IA.
San Diego Symphony Association (98.1 MHz, Channel 251B, 28 kW (H&V), 195 m).	MM Docket No. 84-975; File No. BPHI-840726IC.
Rosalee Sell and Mary F. Sorrentino (98.1 MHz, Channel 251B, 28 kW (H&V), 195 m).	MM Docket No. 84-976; File No. BPHI-840727IC.
San Diego State University Foundation (98.1 MHz, Channel 251B, 29 kW (H&V), 190 m).	MM Docket No. 84-977; File No. BPHI-840727IS.
Jubilee Public Broadcasting (98.1 MHz, Channel 251B, 28 kW (H&V), 195 m).	MM Docket No. 84-978; File No. BPHI-840727JE.
Ethel M. Mike (98.1 MHz, Channel 251B, 28 kW (H&V), 192 m).	MM Docket No. 84-979; File No. BPHI-840727JF.
San Diego Seniors In Action Network (98.1 :MHz, Channel 251B, 28 kW (H&V), 195 m).	MM Docket No. 84-980; File No. BPHI-840727JP.

For Interim Authority to Operate the Facilities of Station KIFM(FM) San Diego, California.

Adopted: October 10, 1984.

Released: October 26,1984.

By the Chief, Audio Services Division.

1. The Commission has before it the above-captioned mutually exclusive applications for interim authority which were accepted following the Commission's Public Notice of June 15, 1984, FCC 84-279, inviting proposals for both permanent and interim operation of the frequency. In December of 1982, the United States Court of Appeals affirmed the Commission's decision denying KIFM's renewal application, *West Coast Media, Inc.* v. *F.C.C.*, 695 F. 2d 617 (D.C. Cir. 1982), *cert. denied*, 104 S. Ct. 74 (1983). Subsequently, the Commission denied a request for permission to sell the station on a distress sale basis, *West Coast Media*, FCC 84-278, released July 10, 1984, 56 RR 2d 483 (1984), but has allowed the former licensee to continue operation of the station pending selection of an interim operator.

2. In the aforementioned public notice, the Commission reminded potential applicants of the fact that KIFM's operation involved "grandfathered" short-spacing with Station KNOB, Long Beach, California on first adjacent channel 205B (97.9 MHz) and advised concerned parties that proposals increasing radiation along any azimuth toward KNOB's 1.0 mV/m contour would not be accepted for filing. The above applicants have all specified the same or equivalent facilities as KIFM. Several of them have requested waivers of the short-spacing and also of our city coverage requirements. However, since the short-spacing would not be increased and the city coverage would be no more deficient than KIFM's, no waivers are necessary.

3. We find that the above applicants for interim authority are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, however, they are being designated in a consolidated proceeding on the issues specified below.

4. Accordingly, it is ordered, that, pursuant to sections 5(c) and 309(e) of the Communications act of 1934, as amended, the above applications are designated for oral argument before the Review Board at a time and place to be specified in a subsequent Order upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in light of evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

5. It is further ordered, that the applicants shall submit their respective showings under the comparative issue within twenty days of the release of this Order.

6. It is further ordered, that the Review Board shall conduct this proceeding on an expedited basis and, if possible, issue a decision within 90 days.

7. It is further ordered, that, in the event of a grant of any of the applications, the authorization will contain the following conditions:

1. The interim operator shall compute its net profits from the operation of the station by generally accepted accounting principles. It shall distribute such net profits to noncommercial educational broadcast interests in the State of California or to charities in the State of California in which the interim operator has no direct or indirect interest. Distributions shall be made at intervals not exceeding three months and shall be in an amount not less than 80% of the accumulated net profits so computed. All net profits not distributed throughout the life of the interim operation shall be distributed to noncommercial educational broadcast interests in the State of California or charities in the State of California in which the interim operator has no direct or indirect interest upon dissolution of the interim operation.

2. After construction, if any, and the commencement of operations, the interim operator shall not make any capital expenditures of more than $1,000 without the prior approval of the Commission and shall not increase salaries, wages, or other compensation or benefits to or for the benefit of principals, officers, directors, partners, stockholders, or management level employees without the prior consent of the Commission.

3. Within six months after the commencement of operation (and no more than every six months thereafter), the interim operator shall file with the Chief, Audio Services Division, Mass Media Bureau a detailed accounting of its financial position. All reports and information so submitted may, at the discretion of the Commission, be made available for public inspection. These reports shall include a balance sheet, profit and loss statement, statement of retained earnings, and a statement of changes in financial position.

8. It is furthered ordered, that to avail themselves of the opportunity to be heard, the applicants shall, within ten days of the release of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the oral argument and present evidence on the issues specified in this Order.

9. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, forthwith upon release of the Order fixing the time and date of the oral argument, cause to be published in a newspaper of general circulation in San Diego, California, a notice of the hearing, either individually or jointly, in the manner prescribed by § 73.3594 of the Commission's Rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 84-29032 Filed 11-2-84; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket Nos. 84-965 and 84-966; File Nos. BPCT-840607KE and BPCT-840723KH]

Warren County Broadcasters and Underwood Enterprises, Inc.; Hearing Designation Order

In the matter of applications of Warren County Broadcasters (MM Docket No. 84-965, File No. BPCT-840607KE), and Underwood Enterprises, Inc. (MM Docket No. 84-966, File No. BPCT-840723KH) for construction permit for New TV Station, McMinnville, Tennessee).

Adopted: October 11, 1984.

Released: October 26, 1984.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of Warren County Broadcasters (Warren County) and Underwood Enterprises, Inc. (Underwood) for authority to construct a new commercial television station on Channel 33, McMinnville, Tennessee.

2. The effective radiated visual power, antenna heights above average terrain and other technical data submitted by each applicant indicates that there would be a significant difference in the size of the areas and populations which would be served by each of the proposals. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contours, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to either of the applicants.

3. Section II, Item 3(a), FCC Form 301, inquires whether the applicant is in compliance with the provisions of section 310 of the Communications Act of 1934, as amended, relating to interests of aliens and foreign governments. Warren County's response indicates that it may not be in compliance with section 310 of the Act. Warren County will be required to submit clarification of its response to the presiding Administrative Law Judge within 20 days after this Order is released.

4. No determination has been made that the tower height and location proposed by Underwood would not constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.

5. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, it is ordered, that, pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

(1) To determine whether there is a reasonable possibility that the tower height and location proposed by Underwood Enterprises, Inc. would constitute a hazard to air navigation.

(2) To determine which of the proposals would, on a comparative basis, better serve the public interest.

(3) To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

7. It is further ordered, that Warren County Broadcasters shall submit a statement clarifying its response to Section II, Item 3(a), FCC Form 301, to the presiding Administrative Law Judge within 20 days after this Order is released.

8. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

9. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

10. It is further ordered, that, the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 29031 Filed 11-2-84; 8:45 am]

BILLING CODE 6712-01-M

[File Nos. BPH-831202 AD, et al.; MM Docket Nos. 84-967, et al.]

Caballero Spanish Radio, Inc., et al.; Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City/state	File No.	MM Docket No.
A. Caballero Spanish Radio, Inc.; Bakersfield, CA.	BPH-831202AD	84-967
B. Glenn L. Orsburn; Bakersfield, CA.	BPH-830526AA	84-968
C. Louis B. Burke, Jr.; Bakersfield, CA.	BPH-830620AA	84-969
D. Margaret Garza; Bakersfield, CA.	BPH-831202AG	84-970
E. Kern Communications Company; Bakersfield, CA.	BPH-831202AX	84-971

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. (See Appendix), C
2. Air Hazard, A,C,D,E
3. Comparative, A,B,C,D,E
4. Ultimate, A,B,C,D,E

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, N.W., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

Issue

1. If a final environmental impact statement is issued with respect to C(Burke) which concludes that the proposed facilities are likely to have an

adverse effect on the quality of the environment,

(a) To determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by Sections 1.1301–1319 of the Commission's Rules; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

[FR Doc. 84-29037 Filed 11-2-84; 8:45 am]

BILLING CODE 6712-01-M

[File Nos. BPH-821118AN, et al.; MM Docket Nos. 84-989, et. al.]

Kenneth S. Hayashi Corp., et al.; Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant and city/State	File No.	MM Docket No.
A. Alan Adams; Honolulu, HI.	BPH-821118AN	84-985
B. Guy Erway, Jr.; Honolulu, HI.	BPH-830204AC	84-986
C. Kenneth S. Hayashi Corporation; Honolulu, HI.	BPH-830204AF	84-987
D. Roger Agnew & Jacqueline Sachs, d/b/a Agnew Sachs Broadcasting; Honolulu, HI.	BPH-830520AI	84-988
E. George Kimble et al, d/b/a Moana Kai Broadcasting Associates; Honolulu, HI.	BPH-830520AP	84-989

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, issued below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. (See Appendix), E
2. (See Appendix), C
3. City Coverage, C
4. Air Hazard, B, D, E
5. Comparative, A, B, C, D, E
6. Ultimate, A, B, C, D, E

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

ISSUE

1. If a final environmental impact statement is issued with respect to E (Moana) which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment,

(a) to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by Section 1.1301–1319 of the Commission's Rules; and

(b) whether, in light of the evidence adduced pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

2. To determine whether C (Hayashi) has reasonable assurance of the availability of its proposed site and in light of the evidence adduced, its effect on Hayashi's basic and/or comparative qualifications.

[FR Doc. 84-29038 Filed 11-2-84; 8:45 am]

BILLING CODE 6712-01-M

[File Nos. BPH-830718AD; et al.; MM Docket Nos. 84-981, et al.]

Villco Communications, Inc.; et al.; Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant and city/State	File No.	MM Docket No.
A. Robert R. Bignami; Corning, CA.	BPH-830718AD	84-981
B. Villco Communications, Inc.; Corning, CA.	BPH-831201AG	84-982
C. Central California Broadcasting, Inc.; Corning, CA.	BPH-831202AN	84-983
D. Empire Broadcasting Corporation; Corning, CA.	BPH-831202BB	84-984

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designed for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, A, B, C
2. Comparative, A, B, C, D
3. Ultimate, A, B, C, D

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written of telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief,

Audio Services Division, Mass Media Bureau.

[FR Doc. 84-29036 Filed 11-2-84; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-727-DR]

Texas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Texas (FEMA-727-DR), dated October 30, 1984, and related determinations.

DATE: October 30, 1984.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287-0501.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter of October 30, 1984, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288), as follows:

I have determined that the damage in certain areas of the State of Texas, resulting from severe storms, high winds and flooding beginning on October 19, 1984, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the State of Texas.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds

available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the affected areas. If requested and necessary, you also are authorized to provide Public Assistance in the affected areas when these requirements are known and an acceptable State commitment for these purposes is provided. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of Section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Ms. Joan F. Hodgins, of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following area of the State of Texas to have been affected adversely by this declared major disaster: San Patricio County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83-516, Disaster Assistance. Billing Code 6718-02)

Samuel W. Speck,

Associate Director, State and Local Programs and Support Federal Emergency Management Agency.

[FR Doc. 84-29027 Filed 11-2-84; 8:45 am]

BILLING CODE 6718-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Center For Health Services Research; Assessment of Medical Technology

The Public Health Service, through the Office of Health Technology Assessment (OHTA), announces that it is conducting a reassessment of what is known of the safety, clinical effectiveness, and acceptability of percutaneous transluminal cornary angioplasty (PTCA) for the treatment of multiple vessel disease. For the purpose of this assessment multiple vessel disease refers to one or more stenoses in more than one coronary artery or more than one stenosis in a single coronary artery.

The PHS assessment consists of a synthesis of information obtained from appropriate organizations in the private sector and from PHS agencies and others in the Federal Government. PHS assessments are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on this assessment, a PHS report will be formulated to assist the Health Care Financing Administration in establishing Medicare coverage policy. Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing no later than February 15, 1985, or within 90 days from the day of publication of this notice.

The information being sought is a review and assessment of past, current, and planned research related to this technology, a bibliography of published, controlled clinical trials and other well-designed clinical studies. Information related to the characterization of the patient population most likely to benefit, the clinical acceptability, and the effectiveness of this technology is also being sought.

Written material should be submitted to: National Center for Health Services Research, Office of Health Technology Assessment, Park Building, Room 3-10, 5600 Fishers Lane, Rockville, Maryland 20857.

Dated: October 29, 1984.

Enrique D. Carter, M.D.,

Director, Office of Health Technology Assessment, National Center for Health Services Research.

[FR Doc. 84-29044 Filed 11-2-84; 8:45 am]

BILLING CODE 4160-17-M

National Center for Health Services Research; Assessment of Medical Technology

The Public Health Service (PHS), through the Office of Health Technology Assessment (OHTA), announces that it is coordinating a reassessment of the appropriateness of the patient characteristics previously recommended for candidates of percutaneous transluminal coronary angioplasty (PTCA). Patients with single vessel coronary artery disease have been considered for PTCA if the following characteristics are present in the clinical evaluation: (1) Intractable angina inadequately controlled with maximal medical therapy, (2) objective evidence of myocardial ischemia, and (3) normal ventricular function. We would like to assess the appropriateness of these criteria in the context of current medical practice and determine if any needed changes, additions or deletions should be made.

The PHS assessment consists of a synthesis of information obtained from appropriate organizations in the private sector and from PHS agencies and others in the Federal Government. PHS assessments are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on this assessment, a PHS report will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy. Any person or group whishing to provide OHTA with information relevant to this assessment should do so in writing no later than February 1, 1985, or within 90 days from the date of publication of this notice.

The information being sought is a review and assessment of past, current, and planned research related to this technology, a bibliography of published, controlled clinical trials and other well-designed clinical studies. Information related to the characterization of the patient population most likely to benefit, the clinical acceptability, and the effectiveness of this technology is also being sought.

Written material should be submitted to: National Center for Health Services Research, Office of Health Technology Assessment, Park Building, Room 3-10, 5600 Fishers Lane, Rockville, Maryland 20857.

Dated: October 25, 1984.

Enrique D. Carter, M.D.,

Director, Office of Health Technology Assessment, National Center for Health Services Research.

[FR Doc. 84-29043 Filed 11-2-84; 8:45 am]

BILLING CODE 4160-17-M

National Center for Health Services Research; Second Notice of Assessment of Medical Technology

The Public Health Service through the Office of Health Technology Assessment (OHTA), announced that it is conducting an assessment of what is known of the safety, clinical effectiveness, and indications for the use of Magnetic Resonance Imaging (MRI). (**Federal Register** 49(85): 18624, 1984).

The first segment of the subject assessment will address the application of MRI technology in the evaluation of lesions of the central nervous system. Specifically, it will examine the efficacy of the subject technology in evaluating lesions involving the brain, brain stem and spinal cord. OHTA is soliciting any clinical and scientific data that address

the effectiveness of this modality for imaging the central nervous system.

The PHS assessment consists of a synthesis of information obtained from appropriate organizations in the private sector and from PHS agencies and others in the Federal Government. PHS assessments are based on the most current knowledge concerning the safety and clinical effectiveness of technology. Based on this assessment, a PHS recommendation will be formulated to assist the Health Care Financing Administration in establishing Medicare coverage policy. Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing no later than February 5, 1985, or within 90 days from the date of publication of this notice.

The information being sought is a review and assessment of past, current, and planned research related to this technology, a bibliography of published, controlled clinical trials and other well-designed clinical studies. Information related to the characterization of the patient population most likely to benefit, the clinical acceptability, and the effectiveness of this technology is also being sought.

Written material should be submitted to: National Center for Health Services Research, Office of Health Technology Assessment, Park Building, Room 3-10, 5600 Fishers Lane, Rockville, Maryland 20857.

Dated: October 29, 1984.

Enrique D. Carter, M.D.,

Director, Office of Health Technology Assessment, National Center for Health Services Research.

[FR Doc. 29042 Filed 11-2-84; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Serial No. I-1518]

Idaho; Termination of Classification for Mulitple-Use Management

Correction

In FR Doc. 84-21771 beginning on page 32808 in the issue of Thursday, August 16, 1984, make the following corrections:

1. On the same page, second column, Boise Meridian, Idaho, Butte County, line twenty-three, "NE¼" should read "NW¼".

2. On the same page, second column, fifth line from the bottom, NW¼, S½, NE¼" should read "NE¼, S½ NW¼".

3. On the same page, third column, line fourteen, "NE¼" should read "NW¼".

4. On the same page, third column, line twenty-six, "W¼" should read "W½".

BILLING CODE 1505-01-M

[U-42915]

Utah; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that a 6,727.9-acre withdrawal for the Gooseberry Project continue for an additional 20 years. The land would remain closed to surface entry and mining but has been and would remain open to mineral leasing.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111.

FOR FURTHER INFORMATION CONTACT: Lillie Hikida, Utah State Office (801) 524-3074.

The Bureau of Reclamation proposes that the existing land withdrawal made by Secretarial Order of April 1, 1941, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The lands are located approximately 50 miles southeast of Spanish Fork and contain 6,727.9 acres located within the following described area in Sanpete County, Utah.

Salt Lake Meridian, Utah

T. 12 S., R. 5 E.,
Sec. 36, lots 3, 6, 7, NW¼SE¼.
T. 13 S., R. 5 E.,
Sec. 13, all;
Sec. 14, S½;
Sec. 23, E½E½, NW¼NE¼, N½NW¼, SW¼NW¼;
Sec. 24, N½, N½S½, SW¼SW¼.
T. 13 S., R. 6 E.,
Sec. 5, SW¼NW¼, W½SW¼;
Sec. 6, lots 2 thru 6 inclusive, SE¼NW¼, NE¼SW¼, S½NE¼, SE¼;
Sec. 7, E½, E½W½;
Sec. 8, NW¼NW¼;
Sec. 9, lots 8 thru 11 inclusive, E½SE¼;
Sec. 16, lots 1 thru 8 inclusive;
Sec. 18, lots 1 thru 4 inclusive, NE¼NW¼, W½NE¼, NE¼NE¼, E½SW¼, SW¼SE¼;
Sec. 19, lots 1 thru 4 inclusive, E½NW¼, W½NE¼, E½SW¼, NW¼SE¼;
Sec. 30, lots 1, 2, 3, NE¼NW¼, NW¼NE¼, SE¼SW¼, S½SE¼;
Sec. 31, lots 1 thru 4 inclusive, E½W½, E½.
T. 14 S., R. 6 E.,
Sec. 4, lots 1 thru 4 inclusive, S½N½, S½;
Sec. 5, lots 1 thru 4 inclusive, S½N½, S½.

The purpose of the withdrawal is to protect the Mammoth Reservoir which is part of the Gooseberry Project. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources.

A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: October 29, 1984.

Orval L. Hadley,

Chief, Branch of Lands and Minerals, Operations.

[FR Doc. 84-29011 Filed 11-2-84; 8:45 am]

BILLING CODE 4310-DQ-M

[U-42912, U-42914]

Utah; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that a 139.71-acre withdrawal for the Provo River Project continue for an additional 100 years. The land would remain closed to surface entry and mining but has been and would remain open to mineral leasing.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111.

FOR FURTHER INFORMATION CONTACT: Lillie Hikida, Utah State Office (801) 524-3074.

The Bureau of Reclamation proposes that the existing land withdrawals made

by Secretarial Order of January 29, 1937 and Secretarial Order of November 19, 1940, be continued for a period of 100 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The lands are located approximately 16 miles northeast of Provo and contain 139.71 acres located within the following described area in Summit and Wasatch Counties, Utah.

U-42912 (SO 1/29/37)

Salt Lake Meridian, Utah

T. 5 S., R. 4 E.,
Sec. 8, NW¼NW¼NW¼.

U-42914 (SO 11/19/40)

T. 3 S., R. 8 E.,
Sec. 2, lot 1.

Uintah Special Meridian

T. 3 N., R. 9 W.,
Sec. 27, W½SE¼.

The purpose of the withdrawal is to protect dams and reservoirs, aqueducts, canals and a pumping plant which are part of the Provo River Project. The withdrawals segregate the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources.

A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: October 29, 1984.

Orval L. Hadley,

Chief, Branch of Lands and Minerals, Operations.

[FR Doc. 84-29012 Filed 11-2-84; 8:45 am]

BILLING CODE 4310-DQ-M

[U-42940, U-035987, and U-087869]

Utah; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that a 1,775.5-acre withdrawal for the Emery County Project continue for an additional 100 years. The land would remain closed to surface entry and mining but has been and would remain open to mineral leasing.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111.

FOR FURTHER INFORMATION CONTACT: Lillie Hikida, Utah State Office, (801) 524-3074.

The Bureau of Reclamation proposes that the existing land withdrawals made by Secretarial Order of June 12, 1943, Public Land Order No. 2126 of June 15, 1960, and Public Land Order No. 3227 of September 11, 1963, be partially continued for a period of 100 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The lands involved are located approximately 25 miles southwest of Price and aggregate 1,775.5 acres in Emery County, Utah within the following described area:

Salt Lake Meridian, Utah

U-42940 (SO 6/12/43)

T. 17 S., R. 6 E.,
Sec. 30, lot 16, S½NE¼,SE¼;
Sec. 31, lots 1, 8, 9, 16, E½.
T. 18 S., R. 6 E.,
Sec. 5, lots 2 through 7, inclusive, S½ of Lot 8, N½S½NE¼, SE¼NW¼, NE¼SW¼;
Sec. 6, lots 1 through 3, inclusive, N½ of Lot 6, SE¼ of lot 6, lots 7 and 8, E½SE¼N W¼, E½SW¼SE¼;
Sec. 7, E½E½NE¼SE¼;
Sec. 8, NE¼NW¼, SW¼NW¼, NW¼SW¼.

U-035987 (PLO 2126 6/15/60)

T. 17 S., R. 6 E.,
Sec. 32, W½W½.

U-087869 (PLO 3227 9/11/63)

T. 17 S., R. 6 E.,
Sec. 30, S½N½NE¼.
T. 18 S., R. 6 E.,
Sec. 4, S½ of lot 5, S½ of lot 6, S½ of lot 7;
Sec. 8, N½SW¼SW¼.

The purpose of the withdrawals is to protect the Joes Valley Reservoir which is part of the Emery County Project. The withdrawals segregate the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources.

A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: October 29, 1984.

Orval L. Hadley,

Chief, Branch of Lands and Minerals, Operations.

[FR Doc. 84-29014 Filed 11-2-84; 8:45 am]

BILLING CODE 4310-DQ-M

[U-5270]

Utah; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that a 1,365.78-acre withdrawal for the Moon Lake Project continue for an additional 100 years. The land would remain closed to surface entry and mining but has been and would remain open to mineral leasing.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111.

FOR FURTHER INFORMATION CONTACT: Lillie Hikida, Utah State Office (801) 524-3074.

The Bureau of Reclamation proposes that the existing land withdrawal made by Secretarial Order of July 3, 1934, be continued for a period of 100 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The lands are located approximately 140 miles east of Salt Lake City and contain 1,365.78 acres located within the

following described area in Duchesne County, Utah.

Uintah Meridian

T. 2 N., R. 5 W.,
Sec. 7, lot 4;
Sec. 18, lots 1 thru 7, inclusive SW¼NW¼ SE¼, SW¼SE¼NE¼, E½SW¼, SE¼;
Sec. 19, N½NE¼, N½S½NE¼.
T. 2 N., R. 6 W.,
Sec. 1, SE¼SE¼SE¼, W½SE¼SE¼, SW¼SE¼, SW¼NE¼SE¼, NW¼SE¼, SW¼SW¼NE¼, SE¼NW¼, E½SW¼ NW¼, SW¼SW¼NW¼, NE¼SW¼, E½SE¼SW¼, NW¼SE¼SW¼, E½ NW¼SW¼, NW¼NW¼SW¼;
Sec. 12, lots 1 thru 7 inclusive, E½E½ NW¼;
Sec. 13, lots 1 and 2, S½NE¼, SE¼, E½E½ NW¼.

The purpose of the withdrawal is to protect the Moon Lake Dam and Reservoir which are part of the Moon Lake Project. The withdrawal segregates the land from operations of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land its resources.

A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: October 29, 1984.

Orval L. Hadley,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84-29013 Filed 11-2-84; 8:45 am]

BILLING CODE 4310-DQ-M

[NM 52336]

New Mexico; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of Defense proposes that a 2,240.14-acre withdrawal for the Department of the Army continue for an additional 50 years. The lands will remain closed to surface entry, mining, and mineral leasing.

DATE: Comments should be received by February 4, 1985.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 1449, Santa Fe, NM 87501.

FOR FURTHER INFORMATION CONTACT: Dolores L. Vigil, New Mexico State Office, 505-988-6659.

The Department of Defense proposes that the existing land withdrawal made by Public Land Order 873 of November 14, 1952, be continued for a period of 50 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The lands are described as follows:

New Mexico Principal Meridian

T. 13 N., R. 3 E.,
Sec. 1, lots 1, 8, 9, and 10, S½NE¼, SE¼NW¼, and NE¼SW¼.
T. 13 N., R. 4 E.,
Sec. 5, lots 1, 2, 3, and 4, NW¼NW¼, SE½NW¼, SW¼, and W½SE¼; lot 5, that part lying north of the east-west-quarter section line;
Sec. 6, lots 1, 2, and 3, NE¼, E½NW¼, NE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 8, lots 3, 4, and 5, W½NE¼, NW¼, N½SW¼, and NW¼SE¼;
Sec. 17, lots 10 and 11; lot 12, that part lying east of the north-south-quarter section line.
T. 14 N., R. 4 E.,
Sec. 31, SW¼NE¼, NW¼NW¼, S½NW¼, and S½.

The areas described aggregate 2,240.14 acres.

The purpose of the withdrawal is for use in connection with the Jemez Canyon Dam and Reservoir Project. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, and the mineral leasing laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, in the New Mexico State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: October 26, 1984.

Monte G. Jordan,

Associate State Director.

[FR Doc. 84-29057 Filed 11-2-84; 8:45 am]

BILLING CODE 4310-FB-M

[NM 088292]

New Mexico; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of Defense proposes that a 2,589.74-acre withdrawal for the Department of the Army continue for an additional 50 years. The lands will remain closed to surface entry and mining and will remain open to mineral leasing.

DATE: Comments should be received by February 4, 1985.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 1449, Santa Fe, NM 87501.

FOR FURTHER INFORMATION CONTACT: Dolores L. Vigil, New Mexico State Office, 505-988-6659.

The Department of Defense proposes that the existing land withdrawal made by Public Land Order 2637 of March 21, 1962, be continued for a period of 50 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The lands are described as follows:

New Mexico Principal Meridian

T. 11 S., R. 22 E.,
Sec. 34, W½SW¼.
T. 12 S., R. 22 E.,
Sec. 3, lot 1, and W½SW¼;
Sec. 4, lot 2, SW¼NE¼ and SE¼SE¼;
Sec. 7, S½NE¼;
Sec. 8, W½NE¼, S½N½NW¼, S½NW¼, and S½SE¼;
Sec. 9, NE¼ and S½;
Sec. 10, W½W½;
Sec. 15, S½NE¼, SE¼NW¼, W½NW¼, N½SE¼, SE¼SE¼, E½SW¼SE¼, NW¼SW¼SE¼, and E½SW¼ SW¼SE¼;
Sec. 17, SE¼SE¼;
Sec. 18, lot 2, E½NW¼;
Sec. 19, lot 1, NE¼, SE¼NE¼NW¼, E½SE¼NW¼, SW¼SE¼NW¼, and N½NE¼SW¼;
Sec. 20, N½;

Sec. 21, N½N½NE¼, N½NW¼ and SE¼NW¼.

The area described aggregate 2,589.74 acres.

The purpose of the withdrawal is for use in connection with the Department of the Army, Two Rivers Reservoir Project. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, in the New Mexico State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: October 26, 1984.

Monte G. Jordan,

Associate State Director.

[FR Doc. 84-29058 Filed 11-2-84; 8:45 am]

BILLING CODE 4310-FB-M

Minerals Management Service

Oil and Gas and Sulfur Operations on the Outer Continental Shelf; Receipt of Proposed Development and Production Plan; Exxon Co., U.S.A.

AGENCY: Minerals Management Service; Interior.

ACTION: Notice of receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Exxon Company, U.S.A. has submitted a Development and Production Plan describing the activities it proposes to conduct as operator of Leases OCS-P 0438 and OCS-P 0440, offshore California. The purpose of this Notice is to inform the public that the Minerals Management Service (MMS) is considering approval of the plan and that it is available for public review and comment.

DATES: The plan may be reviewed weekdays, 8:00 a.m. to 3:00 p.m. Written comments must be received or postmarked by December 28, 1984.

ADDRESSES: The plan is available for public review at the Office of the Regional Director, Pacific OCS Region, Minerals Management Service, Room 160, 1340 West Sixth Street, Los Angeles, California 90017. Written comments may be mailed or hand-delivered to the same address.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas W. Dunaway, Regional Supervisor, Office of Field Operations, Pacific OCS Region, (213) 688-2083.

SUPPLEMENTARY INFORMATION: Section 25 of the Outer Continental Shelf Lands Act, 43 U.S.C. 1351, requires the MMS to make any development and production plans available for public review. Regulation 30 CFR 250.34 provides for the publication of a Notice that such a plan is available for review.

William E. Grant,

Regional Director, Pacific OCS Region.

[FR Doc. 84-29059 Filed 11-2-84; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Exxon Co. U.S.A.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Exxon Company U.S.A. has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 1155 and 1955, Blocks 258 and 265, Vermillion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on October 24, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147 , Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OSC Region, Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: October 24, 1984.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 84-29060 Filed 11-2-84; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Chesapeake and Ohio Canal National Historical Park Commission; Meeting

Notice is hereby given in accordance with Federal Advisory Committee Act that a meeting of the Chesapeake and Ohio Canal National Historical Park Commission will be held Saturday, December 1, 1984, at 1:00 p.m. at the National Park Service Mather Training Center, Harpers Ferry, West Virginia.

The Commission was established by *Pub. L. 91-664* to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Miss Carrie Johnson, Chairman, Arlington, Virginia
Mr. Carl L. Shipley, Washington, D.C.
Ms. Polly Bloedorn, Bethesda, Maryland
Mr. James B. Coulter, Annapolis, Maryland
Mrs. Constance Lieder, Baltimore, Maryland
Mr. William H. Ansel, Jr., Romney, West Virginia
Mr. Silas Starry, Shepherdstown, West Virginia
Ms. Bonnie Troxell, Cumberland, Maryland
Mr. John D. Millar, Cumberland, Maryland
Mr. Rockwood H. Foster, Washington, D.C.
Mr. Barry Passett, Washington, D.C.
Ms. Barbara Yeaman, Brookmont, Maryland
Ms. Joan LaRock, Lovettsville, Virginia
Ms. Elise Heinz, Arlington, Virginia

Ms. Marjorie Stanley, Silver Spring, Maryland
Mrs. Minny Pohlmann, Dickerson, Maryland
Dr. James H. Gilford, Frederick, Maryland
Mr. R. Lee Downey, Williamsport, Maryland
Mr. Edward K. Miller, Hagerstown, Maryland

Matters to be discussed at this meeting include:

1. Old and new business
2. Superintendent's report
3. Committee reports
   Plans and Projects Committee
   Recreation Policies and Issues Committee
   Resources Protection Committee
4. Public Comments

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed.

Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Richard L. Stanton, Superintendent, C&O Canal National Historical Park, P.O. Box 4, Sharpsburg, Maryland 21782.

Minutes of the meeting will be available for public inspection six (6) weeks after the meeting at Park Headquarters, Sharpsburg, Maryland.

Dated: October 30, 1984.

Manus J. Fish, Jr.,

Regional Director, National Capital Region.

[FR Doc. 84-29056 Filed 11-2-84; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-37 (Sub-13X)]

Oregon-Washington Railroad & Navigation Co. and Union Pacific Railroad Co., Abandonment and Discontinuance in Thurston County, WA; Exemption

The Oregon-Washington Railroad & Navigation Company (OWR&N) and the Union Pacific Railroad Company (UP) (applicants) have filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments*, as modified by *Exemption of Out of Service Rail Lines*, 1 I.C.C. 2d 55, decided April 16, 1984. OWR&N intends to abandon, and UP to discontinue service over, a line of railroad known as the Olympia Branch extending between milepost 7.29 and milepost 7.43 at Olympia, a distance of 0.14 mile in Thurston County, WA.

Applicants have certified that (1) no local traffic has moved over the line for at least 2 years, and that no overhead traffic is handled on the line, and (2) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The Public Service Commission (or equivalent agency) in Washington [1] has been notified in writing at least 10 days prior to the filing of this notice. *See Exemption of Out of Service Rail Lines*, 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employee affected by the abandonment will be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 366 I.C.C. 91 (1979).

The exemption will be effective on December 5, 1984 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by November 15, 1984, and petitions for reconsideration, including environment, energy, and public use concerns, must be filed by November 26, 1984, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission must be sent to applicants' representative: Joseph D. Anthofer, 1416 Dodge Street, Omaha, NE 68179.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: October 25, 1984.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84-29000 Filed 11-2-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-125X)]

Seaboard System Railroad, Inc.; Abandonment in Levy and Marion Counties, FL; Exemption

The Seaboard System Railroad, Inc. (SBD) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments*. The line to be abandoned is between milepost AND-837.0 near Lebanon Jct. and milepost AND-855.0 near Dunellon, a distance of approximately 18.0 miles in Levy and Marion Counties, FL.

[1] Washington Utilities and Transportation Commission.

SBD has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line, (2) that no formal complaint filed by the user or rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The Public Service Commission (or equivalent agency) in Florida has been notified in writing at least 10 days prior to the filing of this notice. *See Exemption of Out of Service Rail Lines*, 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employees affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective on December 5, 1984 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by November 15, 1984, and petitions for reconsideration, including environment, energy, and public use concerns, must be filed by November 26, 1984, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: October 29, 1984.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84-29002 Filed 11-2-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub 126X—)]

Seaboard System Railroad, Inc.; Abandonment in Taylor and Dixie Counties, FL; Exemption

Seaboard System Railroad, Inc., (SBD) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments*. The line to be abandoned is 38.17 miles of railroad from near Bucell Jct., to near Shamrock,

between mileposts AND-754.83 AND-793.00, Taylor and Dixie Counties, FL.

SBD certifies that (1) no local traffic has moved over the line for at least 2 years and no overhead traffic is handled on the line, and (2) no formal complaint filed by a user of rail service on the line or a State or local governmental entity acting on behalf of such user regarding cessation of service over the line is either pending with the Commission or has been decided in favor of the complainant within the 2-year period.

As a condition to use this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 92 (1979).

The exemption will be effective December 5, 1984, unless stayed pending reconsideration. Petitions to stay the effective date of the exemption must be filed by November 15, 1984, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by November 25, 1984, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

A notice to the parties will be issued if the exemption is conditioned upon environmental or public use conditions.

Decided: October 23, 1984.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84-28999 Filed 11-2-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-19 (Sub-90X)]

The Baltimore and Ohio Railroad Co.; Discontinuance of Trackage Right in Macon County, IL; Exemption

The Baltimore and Ohio Railroad Company (B&O) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments*. B&O's discontinuance of trackage rights is over that portion of Norfolk and Western Railway Company's (N&W) line between milepost 277.22 near Decatur and milepost 285.72 near Boody, a distance of approximately 8.50 miles, in Macon County, IL.

B&O has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line, (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant with the 2-year period. The Public Service Commission (or equivalent agency) in Illinois has been notified in writing at least 10 days prior to the filing of this notice. *See Exemption of Out of Service Rail Lines*, 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employees affected by the abandonment shall be protected pursuant to *Oregon Short Line R. CO.—Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective on December 5, 1984 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by November 15, 1984, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by November 26, 1984 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should sent to applicant's representative:

Rene J. Gunning, 100 North Charles Street, Suite 2204, Baltimore, MD 21201

Peter J. Shudtz, P.O. Box 6419, Cleveland, OH 44101

If the notice of exemption contains false or misleading information, the use of the exemption is void ab initio.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: October 29, 1984.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84-29001 Filed 11-2-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-240 (Sub.-No. 1X)]

Cambria and Indiana Railroad Co.; Abandonment in Indiana and Cambria Counties, Pa.; Exemption

The Cambria and Indiana Railroad Company (C&I) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exemption Abandonments*.

The line to be abandoned is C&I's Rexis Branch between I.C.C. Station 18+25 at Rexis to I.C.C. Station 76+47 in Buffington Township, Indiana County, PA, and then from I.C.C. station 76+47 to I.C.C. Station 236+43 at Elkdale Junction in Backlick Township, Cambria County, PA, a total distance of 4.132 miles in Indiana and Cambria County, PA.

C&I has certified (1) that no local or overhead traffic has moved over the line for at least 2 years, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The Public Service Commission (or equivalent agency) in Pennsylvania has been notified in writing at least 10 days prior to the filing of the notice. See *Exemption of Out of Service Rail Lines*, 366 I.C.C. 885 (1983).

As a condition of use of this exemption, any employees affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective on December 5, 1984, (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by November 15, 1984, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by November 26, 1984, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Joseph Martin Tower, Bethlehem, PA 18016.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is considered upon environmental or public use conditions.

Decided: November 1, 1984.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 8429158 Filed 11-1-84; 8:45 a.m.]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances, Registration; Mallinckrodt, Inc.

By Notice dated March 30, 1984, and published in the **Federal Register** on April 6, 1984, (49 FR 13757), Mallinckrodt, Inc., Department C.B., Mallinckrodt and Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Etorphine Hydrochloride (9059)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Methadone (9250)	II
Methadone-Intermediate (9254)	II
Metopon (9260)	II
Dextropropoxyphene (9273)	II
Morphine (9300)	II
Thebaine (9333)	II
Opium Extracts (9610)	II
Opium Fluid Extracts (9620)	II
Tincture of Opium (9630)	II
Powdered Opium (9639)	II
Granulated Opium (9640)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II

Objections to addition of Levorphanol (9220) and Hydromorphone (9150) were received by the Drug Enforcement Administration following the **Federal Register** announcement of Mallinckrodt, Inc., to register as a bulk manufacturer of the basic classes of controlled substances listed above. Hearings have been held pursuant to these objections, but the Administrative Law Judge has yet to render a decision. No comments or objections have been received relative to the other controlled substances listed above for which Mallinckrodt, Inc., requested registration. Therefore pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the other basic classes of controlled substances listed above is granted.

Dated: October 29, 1984.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control Drug Enforcement Administration.

[FR Doc. 84-29026 Filed 11-2-84; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application; Applied Science Laboratories, Inc.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 12, 1984, Applied Science Laboratories, Inc., a Division of Altech Association, Inc., 2701 Carolean Industrial Drive, P.O. Box 440, State College, Pennsylvania 16801, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic acid diethylamide (7315)	I.
Mescaline (7381)	I.
Normorphine (9313)	I.
Dihydromorphine (9145)	I.
1-phencylcyclohexylamine (7460)	II.
Phencyclidine (7471)	II.
1-piperidinocyclohexanecarbonitrile (PCC) (8603)	II.
Codeine (9050)	II.
Benzoylecogonine (9187)	II.
Ecgonine (9180)	II.
Dextropropoxyphene (9273)	II.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and any also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than December 5, 1984.

Dated: October 29, 1984.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 84-29025 Filed 11-2-84; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum Services

Notice of Information Collections

The Institute of Museum Services (IMS) has submitted the following collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

Copies of these submissions are available at IMS from Kristine Ramaekers, (202) 786-0539. Send comments to Joe Lackey, Office of Management and Budget, Room 3208 NEOB, Washington, D.C. 20503.

Title: 1985 Museum Assessment Program Grant Application and Information
Form No.: IMS 105
Action: Revision
Respondents: Non-Profit Institutions
Estimated Annual Burden: 200 Respondents; 200 Hours.

Susan E. Phillips,

Director, Institute of Museum Services.

[FR Doc. 84-29040 Filed 11-2-84; 8:45 am]

BILLING CODE 7036-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for History and Philosophy of Science; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for History and Philosophy of Science

Date and Time: Nov. 15, 16, 17, 1984 from 9:00 am to 5:00 pm.

Place: Room 628, National Science Foundation, 1800 G Street, NW, Washington, DC 20550.

Type of Meeting: Closed

Contact Person: Dr. Ronald J. Overmann, Program Director, History and Philosophy of Science Foundation, Washington, DC 20550, telephone (202) 357-9677.

Purpose: To provide advice and recommendations concerning support for research in History and Philosophy of Science.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority To Close: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Reason for Late Notice: Administrative error.

Dated: October 31, 1984.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 84-29053 Filed 11-2-84; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance and Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a proposed revision to a guide in its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The draft, temporarily identified by its task number, FC 402-4 (which should be mentioned in all correspondence concerning this draft guide), is the second proposed Revision 1 to Regulatory Guide 10.9. "Guide for the Preparation of Applications for Licenses for the Use of Self-Contained Dry Source-Storage Irradiators." Regulatory Guide 10.9, issued in April 1980, provided guidance on the preparation of applications for licenses for the use of all gamma irradiators. This proposed revision is being developed to provide guidance in conformance with the new NRC Form 313, but its coverage is limited to applications for licenses for the use of self-contained dry source-storage irradiators. A separate guide is being developed to provide guidance for other types of irradiators.

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompained by supporting data. Comments on both draft should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, by January 4, 1985.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulataory guides are available for inspection at the Commission's Public Document Room, 1717, H Street NW., Washington, D.C. Requests for single copies of draft guides (which may be reproduced) of for replacement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Silver Spring, Maryland this 30th day of October 1984.

For the Nuclear Regulatory Commission.

Robert B. Minogue,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 84-29076 Filed 11-2-84; 8:45 am]

BILLING CODE 7590-01-M

Abnormal Occurrence; Therapeutic Medical Misadministration

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incident or events which the Commission determines are significant from the standpoint of public health and safety). The following incident was determined to be abnormal occurrence using the criteria published in the **Federal Register** on February 24, 1977 (42 FR 10950). The abnormal occurrence is described below, together with the remedial actions taken. This event is also being included in NUREG-0090, Vol. 7, No. 2 (i.e., "Report to Congress on Abnormal Occurrences: April-June 1984"). This report, which will be available in the NRC's Public Document Room, 1717 H Street, NW, Washington, DC 20555, about three weeks after the publication date of this **Federal Register** notice, also contains one additional abnormal occurrence (i.e., "Inoperable Containment Spray System", which occurred at San Onofre Unit 3) which was published in the **Federal Register** (49 FR 35703) on September 11, 1984.

The general abnormal occurrence criteria notes that a major reduction in the degree of protection of the public health or safety can be considered an abnormal occurrence.

Date and Place—Between April 11, 1984, and April 20, 1984, a patient at the St. John' Medical Center, Anderson, Indiana, received a 3,200 rad therapeutic radiation exposure to the rear chest wall instead of the intended 2,000 rad exposure.

Nature and Probable Consequences—A patient, following surgery for removal of a lung, was scheduled for radiation therapy using the hospital's cobalt-60 teletherapy device. The prescription called for five treatments of approximately 400 rads each for a total of 2,000 rads.

Because of an error in the computer calculations in the treatment plan for the patient, the patient received two treatments of 400 rads each and three of 600 rads each for a total exposure of 3,200 rads.

The licensee stated in its report on April 30, 1984, that there were no significant effects evident at the time; however, the patient would have a higher risk of radiation pneumonitis of the remainder of the right lung.

Cause or Causes—The licensee utilizes the services of another hospital to provide computerized treatment planning for radiation therapy. In this instance, the original computer program was not considered accurate for the St. John's Medical Center teletherapy unit and a different computer program was obtained.

In preparing the treatment plan, however, data for the original program was used, resulting in an error in the treatment plan which led to the excessive exposure. The error was discovered in a review by the attending physician after the treatments were completed.

Actions Taken To Prevent Recurrence

Licensee—The erroneous program data has been removed from the computer use in preparing the treatment plans. The hospital providing the treatment planning intends to verify all treatment plans by using a hand-

calculated check before the plans are implemented. Expected radiation exposures will also be compared to actual radiation measurements before being used in the treatment plans.

NRC—The NRC has evaluated the measures taken by the licensee and by the hospital providing the treatment plans and considers them to be appropriate. The licensee's radiation therapy program was reviewed during a July 24, 1984, inspection, and it was concluded that appropriate corrective actions have been taken by the licensee.

An NRC medical consultant agreed with the licensee's statement regarding the effect on the patient.

Dated in Washington, DC this 31st day of October 1984.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 84-29075 Filed 11-2-84; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on San Onofre Nuclear Generating Station Unit 1; Meeting

The ACRS Subcommittee on San Onofre Nuclear Generating Station Unit 1 will hold a meeting on November 26, 1984, in Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendence.

The agenda for subject meeting shall be as follows:

Monday, November 26, 1984—9:00 a.m. until the conclusion of business

The Subcommittee will discuss the NRC Staff's technical basis for restart of San Onofre Nuclear Generating Station Unit 1.

Oral statements may be presented by members of the public with concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their respective consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Sam Duraiswamy (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EST. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: October 30, 1984.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 84-29077 Filed 11-2-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket: 30-14821; License: 25p-18304-01; EA 84-78]

Reich Geo-Physical, Inc.; Order Imposing Civil Monetary Penalty

I

Reich Geo-Physical, Inc., 1019 Arlington Drive, Billings, Montana 59101 (the "licensee") is the holder of License 25-18304-01 (the "license") issued by the Nuclear Regulatory Commission (the "NRC"). License 25-18304-01 authorized the possession and use of byproduct materials for well logging and was placed in a timely renewal status on April 1, 1984.

II

A routine inspection of the licensee's activities under its license was conducted on June 20, 1984. As a result of the inspection, it appeared that the licensee had not conducted its activities in full compliance with the NRC's regulations or the conditions of its license. The results of the inspection were discussed with the licensee's representative during an Enforcement Conference on July 12, 1984. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated August 22, 1984. This Notice stated the nature of the violations, the NRC regulations and license conditions which the licensee had violated, and the amount of the civil penalty proposed. A response dated September 8, 1984 to the Notice of Violation and Proposed Imposition of Civil Penalty was received from the licensee which sought mitigation of the civil penalty.

III

Upon consideration of the answers received and the statements of fact, explanation, and arguments for remission or mitigation of the proposed civil penalty contained therein, as set forth in the Appendix to this Order, the Deputy Director, Office of Inspection and Enforcement, has determined that the violations occurred as stated in the Notice of Violation and Proposed Imposition of Civil Penalty and that the full penalty proposed for the violations should be imposed.

IV

In view of the foregoing, and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 96-295) and 10 CFR 2.205, it is hereby ordered that:

The licensee pay the civil penalty in the total amount of One Thousand Six Hundred Dollars within 30 days of the date of this Order by check, draft, or money order, payable to the Treasurer of the United States, and mailed to the Deputy Director, Office of Inspection and Enforcement, USNRC, Washington, DC. 20555.

V

The licensee may, within 30 days of the date of this Order, request a hearing. A request for hearing shall be addressed to the Deputy Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC. 20555. A copy of any request for hearing shall also be sent to the Executive Legal Director at the same address. If a hearing is requested, the Commission will issue on Order designating the time and place of hearing. Upon failure of the licensee to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issue to be considered at such hearing shall be:

(a) Whether th licensee violated NRC requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty; and

(b) Whether, on the basis of such violations, this Order should be sustained.

Dated at Bethesda, Maryland the 31st day of October 1984.

For the Nuclear Regulatory Commission.

James M Taylor,

Deputy Director, Office of Inspection and Enforcement.

Appendix—Evaluation and Conclusions

The licensee's September 8, 1984 response to the Notice of Violation and Proposed Imposition of Civil Penalty dated August 22, 1984 admits that the violations occurred as described but requests complete mitigation of the civil penalty for various extenuating circumstances including that: (1) the violations were promptly corrected, (2) the licensee has suffered from harsh publicity, (3) the licensee has been financially penalized through a loss in revenue, and (4) inadequate time was allowed to review the Notice of Violation and Proposed Imposition of Civil Penalty before the media was notified. The licensee's arguments in support of mitigation, the NRC staff's evaluation, and the NRC conclusions regarding mitigation are addressed below.

1. Mitigation of the Penalty Based on Extenuating Circumstances

a. Unauthorized Possession of Radioactive Material (Repeat Violation)

(1) *Licensee Response*—The licensee asserts that an NRC Form-241, "Report of Proposed Activities in Non-Agreement States," was submitted in June 1981 requesting approval for the use of the radioactive material in question in the state of Montana. Under the reciprocal agreement specified in 10 CFR 150.20, a general license was, therefore, in effect whereby the NRC would recognize Reich Geo-Physical's North Dakota license to be valid in Montana under the conditions specified on the NRC Form-241. The licensee further states that a request to amend its NRC license to allow possession and use of the material had been prepared but was not submitted due to a clerical oversight.

(2) *NRC Staff Evaluation*—NRC records show that an NRC Form-241 request was approved in June 1981 authorizing temporary use by Reich Geo-Physical of two 15.5 millicurie Am-241 sources during the period from June 20, 1981 to December 20, 1981, in the state of Montana only. It was determined during the NRC inspection conducted on June 20, 1984 that two source (one a 25 millicurie Am-241 source) had been used in 1982 and 1983 in the non-agreement states of Montana, Wyoming, and Utah without the authorization of a valid NRC Form-241 in effect.

The licensee's response regarding clerical oversight concerning the subject license amendment request does not appear to be a justifiable excuse particularly in light of a written commitment made to the NRC following an inspection in 1981 which had identified a violation regarding unauthorized use. The licensee's notarized response letter dated August 11, 1981 committed to submitting and obtaining a license amendment prior to using these unauthorized sources. In addition, the significance of this type of violation had been emphasized following the 1981 inspection in the NRC's confirmatory action letter dated May 21, 1981 and by the May 18, 1981 letter accompanying the Notice of Violation which states in part, "This violation is normally a Severity Level III violation and generally leads to a Proposed Notice of Civil Penalty." Given this emphasis on the earlier violation, clerical oversight does not excuse the violation.

After evaluating the licensee's response to this item, the NRC staff finds no basis for mitigation of the civil penalty.

b. Use of Licensed Material by Unauthorized Personnel

(1) *Licensee Response*—The licensee contends that the unauthorized personnel who had used the material without supervision had received personnel training and instructions in the safe use of the material from the Radiation Safety Officer (RSO) and the potential consequences of inadequate training were minimized by the inherent safety of the devices in question.

(2) *NRC Staff Evaluation*—The NRC staff agrees that the training by the RSO and the quantity and inherent safety of the devices in question may have reduced the potential safety implications of this violation. However, the NRC cannot accept ad hoc training of unknown quality in lieu of the requirements of the license. The licensee did disregard a specific requirement of the license. The staff concludes that there is no basis for mitigation of the civil penalty as a result of the licensee's response to this item.

c. Failure To Calibrate Radiation Survey Instruments at the Required Frequency (Repeat Violation)

(1) *Licensee Response*—The licensee had been under the financial pressure of a depressed business period. Failure to calibrate was a move to cut costs.

(2) *NRC Staff Evaluation*—Although the safety implications of not calibrating instruments at 6 month intervals in this case were small, cost cutting measures which affect compliance with NRC requirements are not justified under any circumstances and may lead to suspension or revocation of the license.

d. Unauthorized Storage Location For Licensed Material

(1) *Licensee Response*—The licensee points out that the material in storage at the unauthorized location was no longer being used and had, therefore, been removed from the transport vehicles and placed in a storage location which was more suitable and secure.

(2) *NRC Staff Evaluation*—The NRC staff does not question the decision to remove the material from the vehicles and cannot address the suitability of the unauthorized storage location. In the licensee's letter dated January 30, 1979, the approved storage location was described in detail, reviewed by the NRC, and made a requirement in the license. The licensee in effect disregarded the requirements of its license. There is no basis for mitigation of the civil penalty as a result of the licensee's response to this item.

e. Failure To Perform Required Leak Tests

Licensee Response—The licensee argues that, for certain sources, leak tests were not required because the sources were not in use.

NRC Staff Evaluation—According to the licensee's response, americium-241 source B–351 exceeded the 6 month leak test interval by approximately 3 months during 1983 and americium-241 source B–085 was removed from service on November 18, 1982. A review of the inspector's field notes shows that, prior to this date, when source B–085 was in use, the previous leak test was performed on November 20, 1981, a period of 12 months. The cesium-137 source mentioned in the licensee's response was not referenced in the leak test citation. The NRC staff finds no basis for mitigation as a result of the licensee's response to this item.

f. Failure To Properly Label Licensed Material for Transport

Licensee Response—The licensee admits that certain packages used for transporting licensed material were not labeled in accordance with NRC regulations. However, the licensee questions whether it or the package manufacturer is responsible for proper labelling. The licensee also argues that some labelling on the packages identified them as radioactive material.

NRC Staff Evaluation—Proper labelling of packages transporting licensed material is the responsibility of

the licensee and is to be in accordance with NRC regulations.

2. Mitigation of the Penalty Based on Prompt Corrective Action and Unreasonable Sanctions Imposed.

a. The licensee has further requested mitigation of the civil penalty because of the following considerations:

(1) *Licensee Response*—The violations have been promptly corrected.

NRC Staff Evaluation—The NRC staff acknowledge that the licensee has taken corrective action for the violations. In this case, the licensee's corrective actions were not unusually prompt and extensive as required by the NRC Enforcement Policy for mitigation, but were only those that the NRC would expect the licensee to take.

(2) *Licensee Response*—The licensee has suffered from the harsh publicity resulting from the civil penalty.

NRC Staff Evaluation—NRC's Enforcement Policy states that enforcement actions are publicly available and that press releases are generally issued for civil penalties and Orders. Mitigation of civil penalties because of adverse publicity suffered by a licensee is not considered in the Enforcement Policy to be a basis for mitigating civil penalties.

(3) *Licensee Response*—The licensee has been financially penalized through a loss in revenue as a result of complying with the NRC's confirmatory action letter dated July 3, 1984 committing the licensee to discontinue use of the unauthorized material.

NRC Staff Evaluation—The NRC's confirmatory action letter of July 3, 1984 was issued to immediately bring the licensee into compliance with NRC requirements. Lost revenue attributed to compliance with NRC requirements is not a basis for mitigation of civil penalties in NRC's Enforcement Policy.

(4) *Licensee Response*—Due to uncontrollable circumstances affecting the licensee, the NRC did not allow sufficient time for the company president to review the Notice of Violation and Proposed Imposition of Civil Penalty before the media was notified causing detrimental publicity.

NRC Staff Evaluation—The NRC's practice is for a press release to be issued 5 working days from the date the Notice of Violation and Proposed Imposition of Civil Penalty is issued for non-reactor licensees. The purpose of this practice is to provide the licensee with sufficient time to receive the Notice and be prepared for any ensuing press inquiries. This practice was followed in this case. As discussed in item 2.a.2 above, issuance of a press release of the contents of the release is not considered in the Enforcement Policy to be a basis for mitigating the civil penalty.

3. NRC Conclusion

The NRC staff has carefully evaluated the licensee's response to the Notice of Violation and Proposed Imposition of Civil Penalty dated September 8, 1984 and the reasons given for requesting mitigation of the civil penalty. The NRC staff has concluded that the licensee's response does not provide an adequate basis for mitigation of the civil penalty.

[FR Doc. 84-29081 Filed 11-2-84; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-266 and 50-301]

Wisconsin Electric Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an extension of the deadline for final environmental qualification of certain electrical equipment important to safety as specified by the provisions of 10 CFR 50.49(g) to Wisconsin Electric Power Company (the licensee), for Point Beach Nuclear Plant, Unit Nos. 1 and 2, located in the Town of Two Creeks, Manitowoc County, Wisconsin.

Environmental Assessment

Indentification of Proposed Action: The action would provide an extension of the deadline for final environmental qualification of Crosby lift indicating switch assemblies (LISAs) and Veam thermocouple connectors for the Point Beach Nuclear Plant Unit Nos. 1 and 2 until June 7, 1985. The LISAs would otherwise be required to be environmentally qualified by the end the fall 1984 refueling outage or November 2, 1984, whichever is earlier for Unit 2 and by the end of the spring 1985 refueling outage or May 24, 1985, whichever is earlier for Unit 1. The Veam thermocouples would otherwise be required to be environmentally qualified by November 2, 1984 for both Units 1 and 2.

The Need for the Proposed Action: The proposed environmental qualification deadline extensions are required because of unexpected delays and complications in the environmental qualification testing program for Crosby lift indicating switch assemblies and Veam thermocouple connectors for Point Beach Units 1 and 2 and because of a delay in the schedule for the next Unit 1 annual refueling outage.

Environmental Impacts of the Proposed Action: Delays such as those requested by the licensee were anticipated by the rule. Deadline extensions for final environmental qualification of safety related electrical equipment are allowed to be granted up to November 30, 1985 by the Director, Office of Nuclear Reactor Regulation, under the provisions of 10 CFR 50.49(g) where the requests are timely and good cause can be demonstrated. Per 10 CFR 50.49(g), good cause can be demonstrated by test complications, installation problems, and procurement lead time. The staff has determined that the requests were filed in a timely manner and that good cause for the requested extensions has been demonstrated in accordance with 10 CFR 50.49(g). As the installation dates are virtually unaffected by the delays for the equipments in question (the only installation delay being a minor outage delay which delays the Unit 1 (LISA installation) the probability of equipment failure to perform its safety related function in both pre and postaccident environments has been significantly increased. Therefore, the probability of post-equipment failure radiological releases will not be greater than previously determined nor do the requested deadline extensions otherwise affect radiological plant effluents. Therefore, the Commission has determined that there are no significant radiological environmental impacts associated with the requested extensions.

With regard to potential non-radiological impacts, the requested extensions involve features located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other non-radiological environmental impact. Therefore, the Commission has determined that there are no significant non-radiological environmental impacts associated with the requested extensions.

Alternative Use of Resources: This action involves no use of resources not considered in the Final Environmental Statement (construction permit and operating license) for the Point Beach Nuclear Plant Unit Nos. 1 and 2.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the requested relief.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a

significant effect on the quality of the human environment.

For further details with respect to this action, see the application for deadline extensions dated August 2, 1984, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Joseph P. Mann Public Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Dated at Bethesda, Maryland this 30th day of October, 1984.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Assistant Director for Operating Reactors.

[FR Doc. 84-29080 Filed 11-2-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-29]

Yankee Atomic Power Co. (Yankee Nuclear Power Station); Exemption

I

Yankee Atomic Power Company (the licensee) is holder of Facility Operating License No. DPR-3 which authorizes operation of the Yankee Nuclear Power Station (Yankee) (the facility) at steady-state reactor power levels not in excess of 600 megawatts thermal (rated power). Yankee consists of a pressurized water reactor (PWR) located at the licensee's site in Franklin County, Massachusetts. The license provides, among other things, that it is subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commssion) now or hereafter in effect.

II

Section 50.44(c)(3)(ii) of 10 CFR Part 50 requires a licensee to install an internal hydrogen recombiner or provide containment penetrations for use with an external recombiner to control hydrogen in containment that may be produced in a loss-of-coolant accident (LOCA).

By letter dated March 6, 1984 the licensee requested an exemption from seismic and redundancy design requirements for the containment penetration isolation valve system to be used for an external hydrogen recombiner at the Yankee Plant. By letter dated June 6, 1984, the licensee informed the Commission that the isolation valves in the containment penetrations designated for an external recombiner has been installed and requested a schedular exemption to allow time for the NRC to complete its review of the exemption request. By letter dated June 8, 1984, the NRC granted the schedular exemption. This document completes the Commission's action on the requested relief from the seismic and redundancy design requirements of 10 CFR 50.44(c)(3)(ii) of March 6, 1984.

The Commission staff has found that the isolation valve system for an external hydrogen recombiner as described in the licensee's March 6, 1984 letter is acceptable because:

1. The isolation provisions of the system containment penetrations, although employing only one manual valve outside containment, have the isolation valves (a) in the normally closed position such that failure will result in the valves being in the position of greater safety with respect to containment isolation, and (b) administratively locked to prevent inadvertent opening. The staff has determined that the probability of failure of the recombiner isolation valves to function when needed is about 10^{-4} to 10^{-5}. This is an acceptable risk based on the cost and marginal improvement in isolation capability if modifications were made to the system to provide redundant isolation valves in series in accordance with GDC 56.

2. The isolation provisions of the valve system employs the use of parallel valves to satisfy the single failure criteria of 10 CFR 50.44(c)(3)(ii) with respect to the hydrogen recombiner function.

3. Yankee has been evaluated and found acceptable (both systems and operator training) of mitigating the system effects and radiological consequences of a LOCA. The probability of a severe accident resulting in significant quantities hydrogen being generated in containment is small because of the small core size relative to the large containment volume.

4. In the event that a hydrogen recombiner is needed following a LOCA, the licensee has determined that the hydrogen concentration in containment would not reach combustible levels of for about 139 days. Consequently, there is sufficient time to connect the recombiner and verify the integrity of the closed system it forms, such that prompt (i.e., automatic) isolation of the recombiner system should not be necessary when it is operating.

5. As part of the Systematic Evaluation Program, the licensee proposed a dedicated Hot Shutdown System to provide the capability to safely shut down the plant for a broad spectrum of external hazards, in particular earthquakes. The staff's review of that system is presented in NUREG-0825 (dated June 1983). The concept underlying that proposal is to prevent loss-of-coolant accidents for such external hazards rather than mitigate concurrent accidents. Consistent with that approach, upgrading the seismic design of the containment isolation valves is not warranted.

6. In the event that the isolation provisions for the hydrogen recombiner valves fail, there exists in both containment penetration lines, a normally open, manual valve between the containment and the isolation valves that my be closed to restore containment isolation.

7. The recombiner value system is subject to testing for containment leakage in accordance with the Yankee Technical Specifications.

Based on the above reasons the staff has concluded that, while the isolation valve system for hydrogen recombiner capability does not meet the explicit requirements of 10 CFR 50.44(c)(3)(ii) regarding redundancy and seismic design, the presently installed system provides an adequate level of safety and that the requested exemption should be granted.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption requested by the licensee's letter of March 6, 1984, is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. The Commission hereby grants to the licensee an exemption from the requirements of 10 CFR 50.44(c)(3)(ii) with respect to seismic and redundancy design requirements for an external hydrogen recombiner isolation value system.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the exemption will be no significant impact on the environment (October 29, 1984, 49 FR 43519).

For further details with respect to this action, see the licensee's requests dated March 6, 1984 and June 6, 1984, and NRC's letter dated June 8, 1984, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555, and at the Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

This Exemption is effective upon issuance.

Dated at Bethesda, Maryland this 30th day of October 1984.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Acting Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-29079 Filed 11-2-84; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Extension of Forms for OMB Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice of proposed extension of forms submitted to OMB for clearance.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980, this notice announces a proposed extension of three forms that collect information from the public. Executive Order 10450 requires that investigations be conducted on all persons entering the Federal service. Optional Form 49 is a voucher form sent to references and former employers/supervisors. The OF 50 is a voucher form sent to educational institutions. And, the OF 51 is a voucher form sent to local law enforcement agencies in conducting National Agency Checks and Inquiries (NACI) in nonsensitive and noncritical-sensitive positions as prescribed in section 3(a) of Executive Order 10450. These checks are a part of the investigation conducted for determining suitability for Federal employment/security clearance. For copies of this proposal, call John P. Weld, Agency Clearance Office, on (202) 632-7720.

DATE: Comments on this proposal should be received within 10 working days from date of this publication.

ADDRESSES: Send or deliver comments to:

John P. Weld, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW, Room 6410, Washington, D.C. 20415; and

Katie Lewin, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, Washington, D.C. 20503

FOR FURTHER INFORMATION CONTACT: John P. Weld, (202) 632-7720.

U.S. Office of Personnel Management.

Donald J. Devine,

Director.

[FR Doc. 84-29078 Filed 11-2-84; 8:45 am]

BILLING CODE 6325-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Options Evaluation Task Force; Meeting

AGENCY: Options Evaluation Task Force of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4

Activities will include:

- DSI Interruptibility.
- Modeling Uncertainty and Conservation.
- Public comment.

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Options Evaluation Task Force.

DATE: Monday, November 5, 1984, 10:00 a.m.

ADDRESS: The meeting will be held at the Council Hearing Room at 850 SW. Broadway; Suite 1100, in Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Wally Gibson, (503) 222-5161.

Edwards Sheets,

Executive Director.

[FR Doc. 84-29092 Filed 11-2-84; 8:45 am]

BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-21434; File No. SR-NASD-84-23]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc.; Relating to Amendments to the Code of Procedure

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 11, 1984, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Association proposes to amend the Code of Procedure to incorporate therein the procedures to be used by the Market Surveillance Committee, a standing committee of the Association, with disciplinary jurisdiction to handle market related violations.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed amendments to the Code of Procedure would establish the Market Surveillance Committee as a committee with authority comparable to that of the District Business Conduct Committees ("DBCC's") and with jurisdiction over market-related matters, such as allegations of insider trading and other market-related types of violations, (e.g., trade reporting, market manipulation, standardized options violations, and violations emanating from automatic execution systems). The Committee would also have jurisdiction over those violations of Schedules D and G of the Association's By-Laws presently handled by the Association's Trading Committee. Any differences in the Code of Procedure between the treatment of the Market Surveillance Committee and the DBCC's reflects the Committee's national scope of jurisdiction and its specialize subject matter.

The proposed amendments to the Code of Procedure are designed to fulfill the responsibility of the Association under section 15A(b)(7) of the Securities Exchange Act of 1934, as amended, to discipline its members for violations of the securities laws, and the rules of the MSRB and NASD. In addition, section 15A(b)(2) of the Act requires that the Association be organized and have the capacity to carry out the purposes of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association does not foresee any impact on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period as the Commission may designate up to 120 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available at the principal office of the above-mentioned self-regulatory organization located at 1735 K Street, NW., Washington, D.C. 20006. All submissions should be submitted on or before November 26, 1984.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-29041 Filed 11-2-84; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 2173]

Texas; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on October 30, 1984, I find that the County of San Patricio constitutes a disaster loan area because of damage from severe storms, high winds, and flooding beginning on October 19, 1984. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on December 31, 1984, and for economic injury until July 30, 1985, at: Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie, Texas 75051, or other locally announced locations.

Interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 217306 for physical damage and for economic injury the number is 622600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 30, 1984.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 84-29062 Filed 11-2-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Senior Executive Service; Performance Review Board; Members

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Members of Senior Executive Service Performance Review Board.

DATE: Performance Review Board effective October 1, 1984.

FOR FURTHER INFORMATION CONTACT: DiAnn Kiebler, PM:HR:P.:X, Room 3213, 1111 Constitution Avenue, NW, Washington, DC 20224, Telephone No. (202) 566-4633, (not a toll free number).

SUPPLEMENTARY INFORMATION: Pursuant to section 4314(c)(4) of the Civil Service Reform Act of 1978, the members of the Internal Revenue Service's Senior Executive Service Performance Review Board for executives in Inspection are as follows:

James Owens, Deputy Commissioner
Norman Bolz, Associate Commissioner (Policy and Management)
John Layton, Inspector General, Department of the Treasury

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal Register** for Wednesday, November 8, 1978 (43 FR 52122).

James I. Owens,

Acting Commissioner.

[FR Doc. 84-29061 Filed 11-2-84; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 215
Monday, November 5, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: Friday, November 2, 1984, 11:00 a.m.

PLACE: 2033 K Street NW., Washington, D.C., 8th floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance briefing.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Acting Secretary of the Commission.

[FR Doc. 84-29136 Filed 11-1-84; 3:18 pm]

BILLING CODE 6351-01-M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: Thursday, November 8, 1984, 10:00 a.m.

PLACE: 2033 K Street NW., Washington, D.C., 5th floor hearing room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Budget categories, plans, priorities—FY 1985/1st Quarter.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Acting Secretary of the Commission.

[FR Doc. 84-29137 Filed 11-1-84; 3:18 pm]

BILLING CODE 6351-01-M

3

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: Thursday, November 8, 1984, 11:00 a.m.

PLACE: 2033 K Street NW., Washington, D.C., 8th floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement budget categories, plans, priorities—FY 1985/1st Quarter.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Acting Secretary of the Commission.

[FR Doc. 84-29138 Filed 11-1-84; 3:18 p.m.]

BILLING CODE 6351-01-M

4

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: Thursday, November 8, 1984, 11:00 a.m.

PLACE: 2033 K Street NW., Washington, D.C., 8th floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance briefing.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Acting Secretary of the Commission.

[FR Doc. 84-29139 Filed 11-1-84; 3:18 p.m.]

BILLING CODE 6351-01-M

5

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: Tuesday, November 13, 1984, 10:00 a.m.

PLACE: 2033 K Street NW., Washington, D.C. 5th floor hearing room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Report on the National Futures Association.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Acting Secretary of the Commission.

[FR Doc. 84-29140 Filed 11-1-84; 3:18 p.m.]

BILLING CODE 6351-01-M

6

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: Friday, November 16, 1984, 11:00 a.m.

PLACE: 2033 K Street NW., Washington, D.C., 8th floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance briefing.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Acting Secretary of the Commission.

[FR Doc. 84-29141 Filed 11-1-84; 3:18 pm]

BILLING CODE 6351-01-M

7

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: November 19, 1984, 10:00 a.m.

PLACE: 2033 K Street NW., Washington, D.C., 8th floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance briefing.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Acting Secretary of the Commission.

[FR Doc. 84-29142 Filed 11-1-84; 3:18 pm]

BILLING CODE 6351-01-M

8

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: Friday, November 23, 1984, 11:00 a.m.

PLACE: 2033 K Street NW., Washington, DC, 8th floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance briefing.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Acting Secretary of the Commission.

[FR Doc. 84-29143 Filed 11-1-84; 3:18 pm]

BILLING CODE 6351-01-M

9

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: Tuesday, November 27, 1984, 10:00 a.m.

PLACE: 2033 K Street NW., Washington, DC, 8th floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule enforcement review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Acting Secretary of the Commission.

[FR Doc. 84-29144 Filed 11-1-84; 3:18 pm]

BILLING CODE 6351-01-M

10

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: Friday, November 30, 1984, 11:00 a.m.

PLACE: 2033 K Street NW., Washington, DC, 8th floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance briefing.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Acting Secretary of the Commission.

[FR Doc. 84-29145 Filed 11-1-84; 3:18 pm]

BILLING CODE 6351-01-M

11

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE: 9:30 a.m. (Eastern time), Tuesday, November 6, 1984.

PLACE: Commission conference room No. 200–C on the second floor of the Columbia Plaza Office Building, 2401 E Street, NW., Washington, DC 20507.

This is to add an agenda item to the announcement issued by EEOC on October 30, 1984: 13. Request for Competitive Contract for Communication Services Nationwide for EEOC.

CONTACT PERSON FOR MORE INFORMATION: Cynthia Matthews, Executive Officer at (202) 634–6748.

Cynthia Matthews,

Executive Officer, Executive Secretariat.

[FR Doc. 84-29123 Filed 11-1-84; 3:18 p.m.]

BILLING CODE 6570-06-M

12

POSTAL SERVICE BOARD OF GOVERNORS

Amendment to Notice of Meeting.

"Federal Register" citation of previous announcement 49 FR 43145, October 26, 1984, previously announced date of meeting: November 13–14, 1984.

Change: The following is added as item c. under 11. Capital Investments: Phase I, Stamp Vending Units Project.

David F. Harris,

Secretary.

[FR Doc. 84-29096 Filed 11-1-84; 3:18 pm]

BILLING CODE 7710-12-M

federal register

Monday
November 5, 1984

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

29 CFR Part 530

Employment of Homeworkers in Certain Industries; Final Rule

DEPARTMENT OF LABOR

Wage and Hour Division, Employment Standards Administration

29 CFR Part 530

Employment of Homeworkers in Certain Industries

AGENCY: Wage and Hour Division, ESA, Labor.

ACTION: Final rule.

SUMMARY: This document provides the final rule on restrictions affecting the employment of industrial homeworkers in the knitted outerwear industry under section 11(d) of the Fair Labor Standards Act (FLSA). Section 11(d) of the FLSA provides that the Secretary of Labor is "authorized to make such regulations and orders regulating, restricting, or prohibiting industrial homework as are necessary or appropriate to prevent the circumvention or evasion of and to safeguard the minimum wage rate prescribed in this Act." Under this rule, any employer who employs any homeworker in the knitted outerwear industry must first obtain a certificate from the Labor Department authorizing such employment. Any knitted outerwear employer who does not obtain a certificate may not legally employ any homeworker and will be subject to the current restrictions on industrial homeworkers, and to all existing sanctions currently provided by the FLSA.

This action is the result of a comprehensive review started in 1980 of homework regulations which have been in effect for almost 40 years without substantive revision. In addition to testimony and comments received by the agency at public hearings held in 1981, extensive written comments have also been received since that time.

On October 9, 1981, a final rule rescinding the restrictions on the employment of homeworkers in the knitted outerwear industry was issued. That action was challenged by a number of organizations who sought to enjoin the rescission, but the United States District Court for the District of Columbia upheld the Department's rule. On November 29, 1983, the Court of Appeals for the District of Columbia Circuit sustained the challenge and remanded the case to the district court with instructions to return the matter to the Secretary of Labor for further proceedings, and to reinstate the restrictions against industrial homework in the knitted outerwear industry "unless properly modified pursuant to reasoned decisionmaking consistent with the opinion of this court."

Thereafter, the Department published a proposal on March 27, 1984, to repromulgate a permanent rule rescinding the restrictions in question, and soliciting comments on various alternatives to total rescission. On June 22, 1984, a second comment period was announced inviting comments on the alternatives to total rescission, and in particular comments pertaining to licensing/registration of employers of industrial homeworkers.

This final rule, which is based upon the entire record compiled in the foregoing proceedings, requires employers of industrial homeworkers in the knitted outerwear industry to obtain certificates. This requirement will facilitate the ability of the Department to enforce the FLSA in this industry. If employers do not obtain a certificate, they will remain subject to the present ban on employment of industrial homeworkers and to all existing sanctions.

EFFECTIVE DATE: December 5, 1984.

FOR FURTHER INFORMATION CONTACT: Herbert J. Cohen, Deputy Administrator, Wage and Hour Division, Employment Standards Administration, Room S-3502, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210, 202-523-8305. This is not a toll free number.

SUPPLEMENTARY INFORMATION:

Background

Statutory Provisions and Homework Regulations

Section 11(d) of the Fair Labor Standards Act (FLSA) provides that the Secretary of Labor is "authorized to make such regulations and orders regulating, restricting, or prohibiting industrial homework as are necessary or appropriate to prevent the circumvention or evasion of and to safeguard the minimum wage rate prescribed in this Act." Pursuant to this authority, the Secretary has issued regulations, published as Part 530 of Title 29 of the Code of Federal Regulations. As originally issued in the 1940's, these regulations restricted the employment of industrial homework in seven industries: Knitted outerwear; women's apparel; jewelry manufacturing; gloves and mittens; button and buckle manufacturing; handkerchief manufacturing; and embroideries. Homework in all other industries has never been restricted.

The regulations essentially provide that the production of goods in these restricted industries may not be carried on by employees in or about a home, apartment, tenement, or room in a residential establishment except by a certificated homeworker. Under specified conditions, an employer may obtain a certificate for employees who are unable to adjust to factory work because of age or physical or mental disability or who are unable to leave home because their presence is required to care for an invalid there. Individuals may also be employed as industrial homeworkers in the restricted industries under the supervision of a sheltered workshop without obtaining a certificate under Part 530.

Final Rule Removing Homework Restrictions in Knitted Outerwear Industry Effective October 1981

The regulations restricting homework were promulgated following a series of public hearings on the seven industries, held from 1941 through 1943. In 1980, in light of the fact that the homework regulations had been in effect for almost 40 years without substantive revision, the Department decided to review the status of industrial homework. Accordingly, the Department held hearings in January and February of 1981 in Burlington, Vermont and in Washington, D.C. to obtain information with respect to employment conditions in industrial homework and the extent to which the restrictions were still necessary to safeguard the minimum wage. In addition to the oral testimony presented at these hearings, written comments were submitted through March 23, 1981.

The testimony and written comments reflected that there were a number of people doing work at home who wanted to continue to do such work and did not feel they were being abused. The testimony and written comments also reflected concern regarding the feasibility of enforcement of the FLSA monetary, child labor, and recordkeeping requirements in the homework setting, the extent to which wages among homeworkers equal or exceed the minimum wage, the effect of the restrictions on employment opportunities, and the competitive effect of homework on firms not employing homeworkers.

Based on the testimony and comments, the Department published a proposal in the **Federal Register** on May 5, 1981 (46 FR 25108) to remove the existing restrictions on homework in all seven industries. Comments were received from more than 10,000 individuals, organizations, and agencies.

On October 9, 1981, after reviewing the entire record, the Department issued a final rule rescinding the restrictions on

the employment of homeworkers in the knitted outerwear industry only (46 FR 50348). Along with this action, the Department announced that it would undertake a concerted compliance effort among employers of homeworkers. The Department's action was taken after consideration of oral testimony received at hearings held pursuant to the **Federal Register** Notice of December 5, 1980 (45 FR 80555) and of the more than 10,000 written comments received as the result of the Notice of Proposed Rulemaking of May 5, 1981 (46 FR 25108).

In reaching this decision, the Department determined that it would be feasible to enforce the FLSA provisions in the knitted outerwear industry without restricting homework and that retention of the restrictions would unnecessarily curtail employment opportunities in the industry.

After issuance of the October 9, 1981 rule, a number of organizations filed suit seeking an injunction against rescission of the homework restrictions in the knitted outerwear industry. On July 23, 1982, the district court upheld the Department's rule. On November 29, 1983, the court of appeals reversed the district court, vacting the rescission of the restrictions (*International Ladies' Garment Workers' Union* v. *Donovan*, 722 F.2d 795 (D.C. Cir. 1983)). The court of appeals held that the Department had failed to articulate adequately the reasons for its action, and that the rulemaking process had therefore not conformed to the requirements of the Administrative Procedure Act. The case was remanded to the district court with instructions to return the matter to the Department for such further proceedings as might be appropriate, and to reinstate the restrictions against homework in the knitted outerwear industry unless properly modified consistent with the opinion of the court.

Current Proposal to Remove Homework Restrictions in Knitted Outerwear Industry

Following the court of appeals decision, the Department published a proposal in the **Federal Register** on March 27, 1984, (49 FR 11786) to repromulgate a permanent rule rescinding the restrictions on homework in the knitted outerwear industry, and solicited comments on various alternatives to total rescission. In doing so, the Department stated its belief that it could effectively enforce FLSA provisions in this industry without restricting homework. Since 1981, the Department has conducted a concerted compliance effort to detect violations of the Act among homeworkers as an alternative to the imposition of restrictions against homework. As part of this effort, the Department has investigated all compliants received involving homework and it has actively sought, through a variety of information sources, to ensure that homework activity, wherever it occurs, is in compliance with the FLSA. In the March 27 proposal it was noted that between October 1, 1981, and December 31, 1983, a total of 591 investigations of employers utilizing homeworkers were conducted as compared with approximately 75 to 80 such investigations during the previous six-year period.

Interested parties were invited to submit written comments relevant to the March 27 proposal and possible alternatives to total rescission of the restrictions on homework in the knitted outerwear industry. These alternatives included: removing the ban on homework in rural areas only; expanding the conditions for granting certificates permitting homework employment; transferring the responsibilities for homework certification and enforcement to the states; and licensing those employers desiring to employ homeworkers.

A total of 690 letters of comment, containing the views of more than 6,000 commenters, were submitted in response to this invitation, but few addressed the alternatives. A second comment period was announced on June 22, 1984 (49 FR 25641) inviting comments on the alternatives to total rescission, especially comments relevant to licensing/registration of employers of homeworkers. Only seven additional letters of comment were received as a result of the second comment period. All additional comments opposed the alternative, preferring either total retention or total rescission of the restrictions on homework in the knitted outerwear industry.

Description of the Final Rule

After consideration of all the comments, including those submitted in response to the May 5, 1981 proposal and the entire record of the January and February 1981 hearings, the Department has decided to issue a final rule which establishes a certification system for employers who wish to employ homeworkers in the knitted outerwear industry. These employers will be required to obtain a certificate from the Department authorizing their employment of homeworkers. Employers in the knitted outerwear industry who do not obtain a certificate will be prohibited from employing homeworkers. To obtain a certificate, an employer in the knitted outerwear industry must provide the Department with the name of the firm, its mailing address, and the physical location of the firm's principal place of business. A certificated employer must also provide the Department with written notice of each change of address of the principal place of business within 30 days of the change in address.

Violations of any provision of the FLSA may be sufficient grounds for denial of a certificate, and open investigations may result in the withholding of a certificate pending the conclusion and resolution thereof. Violation of any provision of the FLSA may constitute sufficient cause for the revocation of any existing certificate. Where employers are found, pursuant to a Wage-Hour investigation, to have utilized homeworkers without obtaining a certificate, appropriate sanctions will be imposed. Certificates may be denied for a period up to a year, and the employer required to cease employing homeworkers as well as to remedy any monetary violations found. In addition, the Department will continue to seek restraining orders, injunctions, and other remedies, including specifically, orders banning the movement of "hot goods" under section 15(a)(1) of the Act to assure compliance with this rule. Section 15(a)(1) expressly prohibits the shipment in commerce of goods which have been produced in violation of the Act. This specific remedy has long been recognized as an appropriate measure to effect compliance in the knitted outerwear industry involving homeworkers. See, *e.g.*, *Mitchell* v. *Law*, 161 F. Supp. 795 (W.D. Tenn. 1957).

This change to the regulation is based on the conclusion by the Department that it can effectively enforce the FLSA with respect to homeworkers employed by a certificated employer, and there is therefore no justification to deny these employees the opportunity to work at home.

The Department's conclusion that it can effectively enforce the Act in the homework sector of the knitted outerwear industry under a certification system is based on several independent grounds. First, the knitted outerwear industry is extremely small, and the Department can ensure effective enforcement. There are only about 63,000 production employees in the entire industry, only a fraction of whom are homeworkers, compared with a universe of some 60 million employees subject to the FLSA. Even if the homework sector should increase substantially in percentage terms as a result of adoption of the certification system, the number of homeworkers

would still be extremely small. These facts and the Department's firm commitment to provide an appropriate level of resources ensure effective enforcement of the Act in this area.

Second, in the Department's judgment, the existing prohibition against homework has been counterproductive. A flat ban on homework reduces an employee's incentive to file a complaint regarding minimum wage violations, since a successful complaint may well lead to a loss of the homeworker's job. Unlike a certification system a ban provides no alternative basis for identifying those firms employing homeworkers. Also homework firms operating in the restricted industries are operating in violation of the law simply by employing homeworkers. Thus they have little incentive to comply with the Act's wage provisions, since, in any event, their very existence violates the Act, and, if found by the Department, they may be permanently closed regardless of minimum wage or overtime violations.

Third, as discussed below in the comment analysis, the certification system embodied in this rule addresses and substantially resolves one of the major obstacles to enforcement which has been alleged to exist in the case of homework firms: the difficulty of locating homeworkers. By continuing to make homework in the knitted outerwear industry illegal for all employers who are not certificated, the certification system responsibly addresses the concerns of those who believe that the FLSA cannot be enforced in homework, because homeworkers cannot be located and identified. In the case of all employers who request certification, the Department will be able to identify homeworkers. For employers who do not request certification, the current prohibition against homework will remain in place.

A restriction on homework is permissible under the FLSA only when necessary or appropriate to safeguard the minimum wage (Section 11(d)). A restriction is simply one tool among many the Department has available to enforce the Act. It is a harsh tool because it deprives persons of the right they would otherwise have to work at home if the so choose. Many empoyees prefer to work at home because it is more convenient. Others would be unable to work at all if not permitted to work at home. For these reasons, the Department believes that homework should not be prohibited if the Act can effectively be enforced by other means. In light of the fact that homework may be freely engaged in by the vast majority of workers, and that enforcement is facilitated in the knitted outerwear industry under a certification system, continuation of the existing ban on homework would unfairly and arbitrarily deprive workers in the industry of the opportunity to work at home.

Analysis of Comments

Introduction

Comments received by the Department during this entire rulemaking have pertained either to the proposal to rescind the restrictions altogether, i.e., lift the present ban against the employment of homeworkers in the knitted outerwear industry, or to the Department's solicitation of comments on alternatives to total rescission including particularly an employer certification proposal. The following analysis will consider the comments and their relationship to the certification system established in this rule.

Discussion of Comments Regarding Total Rescission of Restrictions

Some 6024 of 6048 commenters expressing their views during the 1984 rulemaking proceedings favored rescission of the restrictions on homework in the knitted outerwear industry. However, as was the case with most of the comments received during the 1981 rulemaking (see 46 FR 50348), the vast majority of comments were not specific but merely expressed individual preferences. Where arguments were presented in these comments for removal of the restrictions, the major arguments were that: (1) The number of homeworkers in the knitted outerwear industry is not large and effective enforcement is feasible; (2) restriction is not effective because it increases the difficulty of identifying employers utilizing homeworkers.

Among the governmental and organizational supporters of the proposal were: Senators Orrin Hatch and William Cohen; Congresswoman Olympia Snowe; nine officials from Northeastern states; the Virginia General Assembly; the Center on National Labor Policy; the Heritage Foundation; the New England Legal Foundation; the American Farm Bureau Federation; and the National Association of Homebased Businesswomen.

Substantive comments opposed to the proposal were received from Congressmen George Miller and Fernand St Germain; Governor Scott Matheson of Utah; former Secretaries of Labor Arthur Goldberg, W. Willard Wirtz and Ray Marshall; former Wage and Hour Administrator Clarence Lundquist; six State officials; the Atlantic Apparel Contractors' Association; Knitted Outerwear Manufacturers' Association; United Knitwear Manufacturers' League; and Teamsters Local 856, San Francisco.

The most detailed and comprehensive comments relating to the total removal of the ban were submitted in May 1984 by the International Ladies' Garment Workers' Union (ILGWU). The ILGWU opposed the total rescission of the restrictions in the knitted outerwear industry, as well as all of the alternatives referenced in the Department's proposal. The ILGWU argues that "the same impediments that precluded enforcement of the FLSA among homeworkers in the knitted outerwear industry in 1942 precludes its enforcement among these homeworkers today, and the results of the Department's enforcement program since 1981 do not support the Secretary's contrary assessment." Specifically, the ILGWU believes that the following impediments would exist:

(1) The difficulty of locating and identifying homework employers and their homeworkers;

(2) The difficulty of determining the hours worked by homeworkers;

(3) The inordinate amount of time required to conduct investigations of employers having homeworkers; and

(4) The difficulty of restoring back wages to homeworkers paid in violation of the FLSA.

There follows a summary of the comments on these four specific areas, as well as of other significant substantive comments received; the Department's analysis of these comments; and a description of how certification of employers of home knitters will address these concerns and result in effective enforcement of the FLSA.

A. Locating Homeworkers. The ILGWU and other commenters contended that it is too difficult to identify and locate homework employers and their homeworkers to effectively enforce the Act in this sector, although the ILGWU conceded that an employer certification system, if used, could provide a partial remedy for identifying and locating homeworkers.

The Department agrees that locating homework employers and their employees is a prerequisite to effectively enforcing the FLSA among homeworkers. Between 1981 and 1983 (the latest year for which complete figures are available), the Department

has located nearly 600 employers of homeworkers. Moreover, since homework employers in the knitted outerwear industry must, under the Department's new rule, obtain a certificate from the Department, and their homework employees will have to be identified in the firm's records under existing FLSA regulations, locating legally authorized employers and their homeworkers will not be an obstacle to FLSA enforcement.

In addition, under this rule, an employer who has obtained a certificate will remain subject to a continuing requirement to file updated information when the address of the principal place of business changes. Failure to either obtain a certificate or to provide updated information would constitute a recordkeeping violation of the Act and/or applicable regulations, and could result in the denial or revocation of a certificate, thereby subjecting that employer to the present ban.

It must be emphasized that the current restrictions on homework in the knitted outerwear industry will remain in effect for all employers in this industry who are not duly certificated by the Department to employ homeworkers.

The ILGWU contends that many employers would not seek certificates. This is not a persuasive objection to a certification system, however, because to the extent that employers do not come forward and register, the existing prohibition against homework will be applicable, and all existing sanctions will be available to the Department to enjoin future violations and to recover unpaid back wages which might have accrued. The Department is committed to a vigorous enforcement program to eliminate all homework in this industry except by duly certificated employers.

B. Achieving Accurate Recordkeeping. Some commentors noted the difficulties in accurately determining the hours worked by homeworkers. The ILGWU contends that neither the existing requirement that handbooks be maintained to record hours worked, nor the investigation techniques used by the Department, are adequate to obtain an accurate accounting of hours worked.

Implementation of the certification procedure will give the Department a valuable enforcement tool and will serve to maximize compliance resources, since the time of compliance personnel can be utilized more completely in conducting investigations, rather than in attempting to locate employers of industrial homeworkers in this industry. Violations of FLSA provisions by certificated employers, including the failure to maintain accurate records of hours worked, as well as other records required under the Act, could be grounds for revocation of their certificates, at which time their employment of homeworkers would be prohibited. The prospect of certificate revocation will create a strong incentive for the employer to ensure that accurate records are kept. The information required in the homeworker handbook provides a sound basis for enforcing the minimum wage. Employers obtaining certificates authorizing homework must maintain records now required under existing regulations. Under this rule, knitted outerwear employers certificated to employ homeworkers would be investigated at regular intervals to determine their compliance with FLSA provisions.

The Department has had 45 years of experience with investigations in industries and occupations where time clocks are not maintained and employees are not closely supervised, including, for example, agriculture, construction, route sales, delivery driving, and security and repair services. In these investigations, to determine the actual hours of work, the Department's compliance officers rely on personal interviews with employees and observations concerning the time period required to produce work products or to perform the duties of the job. Indeed, it has been the Department's experience that the investigative problems raised by commenters in relation to homework situations are often not limited to homework, and the Department has been able to develop techniques to deal with those problems.

The Department has gained additional experience since 1981 in determining hours worked by homeworkers as a result of the concerted homework enforcement program. In homework, these standard procedures are supplemented by a Departmental regulation requiring all the employers to record the hours worked and work units produced by homeworkers in special handbooks (29 CFR 516.31(c)).

The Department will provide handbooks to each employer holding a certificate, and will vigorously enforce the requirement for accurate maintenance of the handbook; failure to maintain these records would constitute a violation of Section 15(a)(5), providing grounds for revocation of the employer's certificate.

C. Enforcement Resources. A further objection to the removal of the restrictions is the contention that homework investigations impose a burden on the Department's resources because of the time required to conduct such investigations. The ILGWU contends that the Department does not now have adequate resources to conduct the necessary number of in-depth investigations essential for enforcement of the FLSA among homeworkers in the knitted outerwear industry.

It is true that in the past investigations of employers utilizing homeworkers have often taken more time to complete than the typical Wage-Hour investigation. However, one of the reasons for this has been the greater amount of time spent in locating and identifying homeworkers. Under the certification system, this problem will be resolved with respect to certificated employers. The prospect for certificate revocation for recordkeeping violations should also encourage more scrupulous adherence to the recordkeeping requirements than has been the case in the past, thereby conserving the amount of resources required to determine hours worked.

Moreover, nationally, knitted outerwear is a relatively small industry, with only about 63,000 production employees or approximately one-tenth of one percent of the 60 million employees subject to the FLSA. Only a fraction of these 63,000 employees are homeworkers. The Department believes it has sufficient enforcement resources to effectively enforce the FLSA in an industry of this size, and the expenditure of these resources is a reasonable alternative to total restriction. The Department's commitment in this regard is shown by the increase of some 1900 percent in the number of homework investigations it has conducted since 1981 as compared with prior years.

As previously noted, under this rule, certificated employers will be investigated by the Department at regular intervals. These investigations will be conducted in accordance with established investigation procedures and techniques to determine compliance with all applicable provisions of the FLSA. Employers found to be in violation of the FLSA will be subject to revocation of their certificate, at which time their employment of homeworkers would again be prohibited.

The resource impact of these periodic reinvestigations will be reduced by the fact that, based upon the historical experience of the Department, reinvestigations typically take less time than the initial investigation. Based on the very small size of this industry, the Department will have adequate compliance resources available to periodically investigate every employer who participates in the certification program.

D. Back Wage Recovery. The ILGWU and other commenters contend that the Department has recovered only a small fraction of the back wages it has found due in knitted outerwear homework investigations conducted since 1981, and that this shows that enforcement in the industry is infeasible.

Under the rule promulgated today, the Department will institute litigation in appropriate cases where employers of homeworkers do not voluntarily agree to correct FLSA violations and restore back wages found due employees. Moreover, since certificated employers will be investigated at regular intervals, monetary violations, where present, will be detected before a large back wage liability has accrued. It has been the experience of the Department that employers are more willing and able to restore back wages to their employees when the total amount of such liability is relatively small. In addition, the fact that certificated employers will be subjected to periodic reinvestigations will minimize the availability of the statute of limitations governing back wage recoveries. Moreover, under this rule, a certificated employer of homeworkers who is found to be in violation of FLSA monetary violations will be subject to revocation of the certificate as well as the full range of sanctions available under FLSA to obtain compliance and payment of back wages.

E. Employment Relationships. Another contention made by those opposing the proposal is that it is difficult to determine the party responsible for FLSA violations and for payment of back wages because of the complex employer-employee relationships in homework. The ILGWU contends that complex employer-employee relationships pose a particular problem in the knitted outerwear industry, because small firms frequently turn to outside contractors to help them cope with the seasonal demand for knitted outerwear.

Under the certification system, the Department will be able to find the employer who is responsible for the violations, since, by obtaining a certificate, the employer will have self identified. Moreover, under this rule, knitted outerwear employers who obtain certification to employ homeworkers remain subject to FLSA recordkeeping regulations which require full identification of all their employees as well as any agent, distributor, or contractor with whom they do business. Failure by a certificated employer to comply with these requirements could be a basis for revocation of the certificate authorizing employment of homeworkers.

We also note that while the employer/employee relationship issue is frequently raised by homework employers as a defense, the Department has been very successful over the years in establishing employment relationships in homework situations. *Goldberg* v. *Whitaker House Cooperative, Inc.*, 366 U.S. 28 (1961); *Fleming* v. *Palmer*, 123 F.2d 749 (1st Cir. 1941), *cert. denied sub nom. Caribbean Embroidery Cooperative, Inc.* v. *Fleming*, 316 U.S. 662; *Walling* v. *American Needlecrafts, Inc.*, 139 F.2d 60 (6th Cir. 1943); *McComb* v. *Homeworkers Handicraft Cooperative*, 176 F.2d 633 (4th Cir. 1949), *cert. denied* 338 U.S. 900; *Tobin* v. *Harwood*, 10 WH Cases 73 (W.D. Tenn. 1951), *aff'd. per curiam* 194 F.2d 538 (6th Cir. 1952); *Mitchell* v. *Law*, 161 F.Supp. 795 (W.D. Tenn. 1957; *Mitchell* v. *Nutter*, 161 F.Supp. 799 (D.Me. 1958); *Wirtz* v. *Wrightenberry*, 218 F.Supp. 404 (M.D.N.C. 1963); *Hodgson* v. *Rancourt*, 336 F.Supp. 1119 (D.R.I. 1972).

There is now a substantial body of case law addressing this issue as a result of successful litigation by the Department against employers in a number of industries where employees were alleged to be independent contractors. As early as 1947, the Supreme Court said in the case of *Rutherford Food Corp.* v. *McComb*, 331 U.S. 722, 729 (1947): "Where the work done, in its essence, follows the usual path of an employee, putting on an 'independent contractor' label does not take the worker from the protection of the FLSA".

F. Employment of Illegal Aliens. Comments were also made that lifting the ban on homework would result in an increase in the employment of illegal aliens as homeworkers. The ILGWU stated that the propensity of illegal alien homeworkers not to complain is a significant impediment to identification of the universe of homeworkers in the knitted outerwear industry, because the skills required for knitting at home are not specialized and are either already known or easily learned by immigrant women who cannot obtain other employment.

Under the certification system it will not be necessary to receive employee complaints in order to locate certificated homework firms and their employees. Moreover, employment of illegal aliens at substandard wages is a matter with which the Department has had considerable experience over a period of many years. The enforcement problems in the employment of illegal aliens in homework are not significantly different from those found in other industries in which illegal aliens have been found. In addition, since 1978, the Department has earmarked resources for targeting special directed investigations of employers in specific industries and geographic areas which are likely to be employing illegal aliens under terms violative of Federal labor laws. During fiscal year 1984, the Wage and Hour Division conducted 16,860 investigations targeted in this manner. In conducting these investigations, the Department often utilizes information provided by the Immigration and Naturalization Service (INS). Moreover, in recognition of language barriers that are frequently present when dealing with legal as well as illegal aliens, the Department has increased its employment of bilingual enforcement personnel who are proficient in Spanish, Chinese, Haitian, Creole, Vietnamese, and other foreign languages.

In addition, as previously discussed, employers seeking certification under this rule to employ homeworkers in the knitted outerwear industry will have to maintain proper records for all employees and will be subject to FLSA investigations at regular intervals.

Rejection of Proposal to Rescind the Ban and Adoption of Proposal to Establish Certification System

In its March 27, 1984, Notice of Proposed Rulemaking, the Department proposed a complete rescission of the ban on homework in the knitted outerwear industry. The Department noted that investigations conducted as part of its concerted enforcement program had found that the rate of minimum wage and overtime violations was roughly comparable for homework and non-homework employers. Some 56 percent of all homework firms investigated were found to be in compliance with the Act's minimum wage and overtime provisions. The compliance rate was 40 percent for investigations arising from complaints and 66 percent for non-complaint investigations. For homework investigations in the knitted outerwear industry alone, the comparable figures were 39 percent overall, 11 percent for complaint investigations and 53 percent for non-complaint investigations. For all investigations for the same period, including non-homework firms, the minimum wage and overtime compliance rate found was 34 to 36 percent (25 to 27 percent for complaint investigations, and 52 to 56 percent for non-complaint investigations).

The results of the Department's concerted enforcement program afford a reasonable basis for concluding that the Act can be effectively enforced with respect to employers of homeworkers, including those in the knitted outerwear industry, just as it can be enforced against factory and the non-homework employers. We note, however, that the commenters, particularly the ILGWU, have raised a number of concerns with respect to reliance on the concerted enforcement program as a basis for rescinding the homework ban. In light of the concerns raised by the commenters, the Department has concluded that it would be reasonable to adopt an employer certification system. As discussed above, the certification system will enable law-abiding employers, who are willing to identify themselves and to submit to regular periodic compliance investigations, to employ persons who, for whatever reason, wish to work in their homes rather than in factories. It will not require excessive paperwork and will be simple to administer. At the same time, it will also address the various specific obstacles to enforcement which the commenters have alleged to exist in the case of homework firms, notably including the problem of locating and identifying homework firms and their employees.

Reasons for Selection of Certification System; Analysis of Comments Regarding Certification System

Commenters responding to the alternatives to total rescission, including the licensing (certification) alternative were essentially opposed to the certification proposal and were either in favor of total retention or rescission of the restrictions. However, some commenters were willing to endorse certification but only as their second choice and under certain limitations. For example, an employer of 40 homeworkers in the knitted outerwear industry in Maine, supported this alternative on the grounds that it would facilitate the regulation of the employer and not the employee. This employer commented further that it is appropriate to have the employer the one to meet the registration requirement rather than the employee.

The ILGWU stated there were two reasons why a certification system would not make enforcement of the FLSA feasible. First, this system would depend on self-identification by employers of homeworkers, and experience has indicated that most employers of homeworkers in this industry are unwilling to identify themselves. To the extent this contention has merit, it should be reiterated that absent certification, the employer will still be subject to the present ban. The second reason given by ILGWU is that even substantial compliance by employers with a certification system would not overcome the other obstacles to effective enforcement of the FLSA among homeworkers, including inadequate recordkeeping, insufficient enforcement resources, and difficulty of restoring back wages. On the contrary, because an employer will know that it is at risk of losing its certification for an FLSA violation, it will have a powerful incentive to comply with the recordkeeping and all other provisions of the FLSA; the employer will also know that it will be subject to investigations at regular intervals to insure compliance with the Act. Self-identification of employers of homeworkers and regular investigations will also substantially reduce the resource and back wage problems. For these and the other reasons fully discussed in subsections B through F above, the Department is convinced that the certification procedure will be a valuable tool for overcoming the recordkeeping, resource, and back wage recovery problems, to the extent that they currently exist.

Other commenters contended that certification would be discriminatory in that it would affect only one industry (knitted outerwear); and certification would be burdensome, costly, time consuming and would be counter to the Paperwork Reduction Act.

In the Department's view, the certification procedure will be simple, require a minimum of paperwork, and be inexpensive to administer. An employer wishing to obtain a certificate need only notify the Department of that fact and furnish its name and actual place of business. In the case of employers who obtain certification, this system will solve a major concern raised by many commenters, that of locating homework employers and their employees. Certification will also provide added incentive for homeworkers to lodge wage and hour complaints since their employment at home will no longer be illegal and they will no longer automatically suffer the loss of their employment as a result of making the Department aware of their status as a homeworker in a restricted industry. Moreover, the certification procedure will result in the Department obtaining investigation leads concerning the employment of other homeworkers, since our investigation experience in this area has indicated that homeworkers often are aware of such work being done by others.

To ensure that knitted outerwear employees are aware that their employer is properly certificated, all homework handbooks issued to employees employed pursuant to a certificate will contain a written notice of such certification from the Administrator of the Wage and Hour Division. That notice will be deemed to be part of the homework handbook for employees in the knitted outerwear industry.

Some commenters have asserted that employers who violate the FLSA may not apply for certification. Employers who do not obtain a certificate will continue to be banned from employing homeworkers in the knitted outerwear industry and will be subject to closure through a Departmental enforcement action. Although we would encourage all employers of homeworkers in the knitted outerwear industry to apply for certification, the Department will continue its concerted enforcement effort to identify and stop illegal homework for those employers who are not certificated. The certification procedure will, however, give employers the opportunity to employ workers who, for whatever reason, prefer to knit in their homes rather than in the employer's place of business.

The certification approach is a well established method of monitoring certain types of economic activity by both Federal and State governments. The Department of Labor has had many years of experience in programs utilizing certificates for various activities under FLSA. These programs include sheltered workshop and handicapped worker certification, as well as subminimum wage certification for full-time students and vocational educational students. The Department has also administered large scale certification programs under the Farm Labor Contractor Registration Act and the Migrant and Seasonal Agricultural Worker Protection Act (MSPA). These certification programs were established by Congress, and have been successfully administered despite their comlexity and large size.

In addition, there is considerable precedent for homework certification under State laws. Eighteen States, as well as the District of Columbia and Puerto Rico, have laws governing homework, and all but four States and the District of Columbia have requirements for licenses or certificates for homework under certain conditions. Most of these requirements have been in effect for many years. All employers granted certificates under this rule will

be advised that such certificates do not relieve them from their obligation regarding the employment of homeworkers in compliance with applicable State and local requirements. In addition, the Department will advise appropriate State agencies of the issuance of all certificates authorizing the employment of homeworkers in the knitted outerwear industry.

Rejection of Other Alternatives

The Department's March 27, 1984, proposal solicited views on three alternatives to rescission, in addition to licensing/certification of homeworker employees; namely, providing an exemption for rural homeworker employment, expanding the current employee exemption conditions, and transferring certification and enforcement functions to the States. Very few comments were received on these proposed alternatives; most of those who did comment on the alternatives opposed their adoption and supported either total restriction or total rescission of the restrictions.

The Department has carefully considered these additional alternatives and the comments received. These alternatives were rejected as not feasible or appropriate.

There follows a discussion of these alternatives.

A. Remove the restrictions on knitted outerwear homework in rural areas but retain restrictions for urban areas. Under this alternative proposal only persons residing in rural areas, as defined by the Secretary, would be permitted to engage in knitted outerwear homework. The majority of commenters opposed this alternative, including: The Center on National Labor Policy, which stated that "no workable definition distinguishing between 'urban' and 'rural' could be equitably drafted"; The New England Legal Foundation, which indicated that there was no basis in the record "that would support a restriction on some workers and not on others because of the choice of where they live and work"; State of Vermont Representative Susan Aulc, who stated that this alternative was "discriminatory" because it would still prevent the employment of homeworkers in some sections of metropolitan areas, such as found near Burlington, Vermont, which were "as rural and isolated as those in the hinterlands of rural Vermont"; and the International Ladies Garment Workers Union (ILGWU) which refuted one of the Department's cited advantages of this alternative, that it would overcome the limited availability of factory employment and lack of public transportation in rural areas. The ILGWU stated that "not all rural areas are devoid of factory employment. In fact with the pronounced decentralization trend in factory location in recent years, factory employment and general economic activity have grown faster in rural and non-metropolitan areas than in larger urban areas". In refuting the public transportation consideration, the ILGWU stated that the "lack of suitable public transportation is not less a problem in some major cities, such as Houston, or in smaller cities and towns, than it is in small, predominantly rural states." The ILGWU also opposed this alternative because "ruralness" did not appear to prevent employer wage violations, as evidenced by the "preponderence of monetary violations found by the Labor Department's recent investigations in knitted outerwear were ascribed to employers operating in arguably rural settings, (with) more than 80 percent of the violations by employers based in Vermont, Maine, Colorado, and Lancaster County, Pennsylvania".

The Department has concluded that the alternative of removing the restrictions in knitted outerwear homework in rural areas and retaining the restrictions in urban areas is not appropriate. There is no persuasive evidence that the needs of rural homeworkers are essentially different from those of urban homeworkers. Moreover, it would be difficult to devise a workable definition of "rural" vs. "urban" that would avoid inequitable treatment of employees. There are "urban" areas in States that are generally considered to be "rural" in nature. And there are "rural" areas in States that would generally be characterized as "urban". The Department's enforcement experience does not indicate that minimum wage or overtime violations are less prevalent among rural than among urban homeworkers. Finally, as noted above, the Act authorizes the Department to restrict homework only to the extent necessary to safeguard the minimum wage. The Department believes that under the certification system effective enforcement of the minimum wage provisions of the Act is possible in the homework sector of the knitted outerwear industry in both urban and rural areas. Therefore, the essential predicate for a complete prohibition against homework in urban areas is lacking.

B. Expand the conditions for granting certificates permitting homework employment in the knitted outerwear industry. Under this alternative proposal, the current system for granting special certificates authorizing homework in the knitted outerwear industry would be expanded to include various additional categories of need, such as the following: need to care for children or other family members; lack of accessible factory employment; lack of public transportation; and economic need.

There were no substantive comments in favor of this proposal. The American Farm Bureau and Robert Abrams, Attorney General of the State of New York stated the program would be difficult to design and administer. The ILGWU and the Knitted Outerwear Manufacturers' Association (KOMA) contended that an extension of certificates based on the need to care for children would lead to child labor violations. KOMA also stated that economic need is not a good criterion as these employees are the most likely to be abused. Harold Richter pointed out that a condition based on economic need could be demonstrated by virtually every worker. The ILGWU also stated that current exemptions are limited to conditions that are relatively permanent and involuntary and that the additional conditions proposed would be based on personal preference and convenience.

The Department has concluded that this alternative is not appropriate. The considerations weighing against this proposal include: it would be extremely difficult to define what constitutes a legitimate need for an employee to work at home and yet avoid inequities; this alternative might result in a substantial paperwork burden for the public; and this alternative would be difficult to monitor and guard against abuses, while providing the necessary flexibility to take into account individual circumstances.

C. Transfer homework certification and enforcement responsibilities to the States. Senators Leahy and Stafford, and Attorney General John Easton of Vermont submitted substantive comments in favor of this alternative. They recommended a specific "Vermont Plan" which was first submitted to the Department in 1981, and which would amend existing regulations to add an additional category of workers who could be authorized to work at home in the knitted outerwear industry: A resident of a State designated by the Department to issue homeworker certificates for DOL.

The majority of other commenters opposed the alternative of transferring homework certification and enforcement to the States. The commenters included: the New England Legal Foundation,

which stated that "shifting enforcement powers to the state without changing criteria for issuing the certification is a meaningless regulatory act and should be rejected"; the Center on National Labor Policy, which indicated that instituting this alternative "would take too long, would likely involve unmanageable coordinating efforts between the Department and the States, and cause irreparable harm to all currently employed homeworkers"; KOMA, which stated that this alternative was not viable because required uniform enforcement "can only be accomplished through uniform federal standards and consistent application of uniform policies by a single enforcement agency"; the State of New York Department of Labor, which expressed concern about "whether the federal government is willing to underwrite the full cost to the individual state of providing such services (and) the possible erosion of state standards"; and ILGWU, which stated that the "experience of differential state regulation of homework in the 1930s clearly indicated that employers would transfer homework to states with the weakest regulations or reputation for lax enforcement."

The Department has decided not to adopt this alternative as it is not feasible. The implementation of the transfer of certification and enforcement responsibilities to the States would involve extensive negotiations and coordination between the Department and the States to prevent duplication of effort and inequitable or conflicting enforcement. For example, a transfer of this type could result in situations where employers and their homework employees reside in different States, with different certification requirements or enforcement sanctions. A transfer could also result in a certification system which authorizes the Department to issue homeworker certificates based on a handicap or need to care for an invalid; while one or more States would authorize certificates based on residency or some other criteria. Because of this possibility of different certification requirements among States, the Department is concerned that a transfer of certification and enforcement responsibilities to the States would be contrary to the statutory purpose of the FLSA to establish minimum uniform labor standards so as to prevent unfair competition.

Scope and Description of Final Rule Establishing Certification Procedure

With the exception of seven specific industries, all homework occupations are permitted without restriction under FLSA. While the Department acknowledges that FLSA enforcement in homework requires additional time, we believe this problem can be resolved in the knitted outerwear industry by requiring employers of homeworkers to obtain a certificate from the Department allowing such employment. Under such an arrangement, employers who obtain a certificate would be permitted to employ homeworkers, while employers without such a certificate would continue to be subject to the existing restrictions on the employment of homeworkers. The certification procedure would be simple and inexpensive to administer. Employers legally utilizing homeworkers would be known to the Department and their compliance with the Act could be determined by investigation. The result would be that homeworkers who are being properly paid would not be deprived of employment opportunities and employers who fail to identify themselves as employers of homeworkers could not legally employ homeworkers.

Under this rule, knitted outerwear employers who wish to utilize homeworkers in this industry will provide the Department with the name(s), physical address and mailing address of their firm(s). The certification procedure has been made as simple as possible in order to avoid unnecessary paperwork burdens.

Authorization for such firms to employ homeworkers may be denied or revoked should it be determined that they have failed to notify the Department of material changes in the information already provided, or have failed to comply with any of the provisions of the FLSA.

To ensure effective enforcement of this rule, the Department is prepared to utilize all available and appropriate sanctions under the FLSA and Regulations, 29 CFR Part 530 against employers in the knitted outerwear industry utilizing homeworkers in violation of the FLSA, whether or not they are certificated for their employment of homeworkers.

Violations of any provision of the FLSA could result in the employer's homeworker certification being revoked for up to one year. In determining whether to deny a certificate or to revoke an existing certificate for FLSA violations, the Department will give careful consideration to an employer's past compliance record and the employer's willingness to comply in the future and to restore the full amount of any back wages found due employees. Consistent with the existing provisions of Part 530, before a certificate is denied, interested parties will be given written notice and afforded an opportunity to demonstrate or achieve compliance. In appropriate circumstances, the Administrator shall afford an opportunity for a hearing to resolve a disputed matter. By this procedure, appropriate due process will be provided to affected employers.

The Congress has viewed certification of employers as a viable method of ensuring that workers' employment rights are protected. The Department has had many years of experience in certificating employers for various activities under the Farm Labor Contractor Registration Act and subsequently under the Migrant and Seasonal Agricultural Worker Protection Act. Under these statutes, the certification requirements have applied not only to employment, but also to housing and transportation of workers. In 1983, there were in excess of 19,000 certificates issued to parties seeking to perform farm labor contracting activities involving the employment, housing, and transportation of more than 500,000 workers.

The Department believes that the certification of employers of homeworkers in the knitted outerwear industry provides a reasonable balance between the interests of allowing workers the freedom to work at home and maintaining an effective homework enforcement program.

Responsiveness of Final Rule to Court of Appeals Decision

In formulating this final rule, the Department has carefully considered the court of appeals' November 29, 1983 decision. In that decision, the court of appeals, in reversing a favorable district court decision and in vacating the rescission of the restrictions on homework in knitted outerwear, held that the Department had failed to adequately articulate the reasons for its action. The court rested its conclusion primarily on three factors:

(1) The Department had erred by failing to consider alternatives to complete rescission; (2) the Department had not articulated adequately the basis for its conclusion that it would be feasible to enforce the FLSA if the homework ban were lifted; and (3) in relying on projected gains in employment among homeworkers as a basis for the rescission, the Department had not adequately considered the possibility that any such gains would be offset by reductions in the employment and earning power of factory workers.

The rule published today addresses each of these factors. As explained in the discussion set forth above, the Department has carefully considered the various alternatives and has determined that the certification system is the superior choice. The Department has also given careful consideration to enforcement feasibility in light of the concerns expressed by the Court, and has concluded that the certification system will provide an effective enforcement mechanism. As discussed above, the knitted outerwear industry is extremely small, so that even a substantial percentage increase in the homework share of the industry would not render enforcement impracticable, particularly under a certification system which would relieve the Department of the burden of locating and identifying legal homework. The Department has also explained above that it does not believe that consideration of enforcement feasibility supports adoption of a special rule for rural areas as opposed to urban areas. Finally, although the specific impediments to enforcement found by the Administrator in 1942 are the same as the obstacles alleged to exist today by the commenters, the Department believes that these obstacles can be reasonably handled under the certification system adopted by this final rule.

The Department has also carefully considered the section of the Court of Appeals' November 1983 decision involving the possible effects of legalizing homework in the knitted outerwear industry on factory workers. The Court held that, because the Department had relied on an increase in employment opportunities for homeworkers as a basis for rescinding the ban on homework, it should also have discussed the possibility of a consequent reduction in employment opportunities for factory workers. The final rule promulgated today is not based on the Department's views as to the effect of the rule on employment levels but rather on the Department's conviction that it can effectively enforce the FLSA under a certification system for homework firms in the knitted outerwear industry, and that there is therefore no basis for denying persons who wish to work at home under the conditions of such a system the opportunity to do so.

In the Department's view, its statutory mandate under section 11(d) is to issue such rules regulating homework as are necessary or appropriate to safeguard the minimum wage. One purpose of the federal minimum wage is to protect all employers and employees, including factory employers and their employees, from the effects of unfair competition based on payment of subminimum wages. Given that the Department has determined, after careful consideration, that it can effectively enforce the provisions of the FLSA under the certification system, the Department has fulfilled its obligation to consider the effects of the rule on factory workers and their employers. With effective enforcement of the Act, the Department does not believe it has a statutory mandate to favor one type of employment, homework or factory work, over another, and it does not read the court of appeals opinion as holding otherwise.

A certification system that allows law-abiding employers to employ homeworkers in the knitted outerwear industry is a reasonable and appropriate method to ensure effective enforcement of the FLSA while allowing persons employed in this type of work the same basic freedom to work at home that is allowed under federal law to almost all other workers.

Regulatory Flexibility Act

The Department believes that the rule will have no "significant economic impact on a substantial number of small entities" section 5(b) of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164 (5 U.S.C. 605(b)). The Under Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect.

This conclusion is based upon all information presently available to the Department, including the comments received in response to the proposal.

Executive Order 12291

This rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulation, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore no regulatory impact analysis is required.

This document was prepared under the direction and control of William M. Otter, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 530

Employment, Investigations, Labor, Law enforcement, Minimum wages, Wages, Licenses.

Accordingly, 29 CFR Chapter V is amended as set forth below. Signed at Washington, D.C. on this 1st day of November 1964.

Ford B. Ford,

Under Secretary.

Susan R. Meisinger,

Deputy Under Secretary.

William M. Otter,

Administrator, Wage and Hour Division.

PART 530—EMPLOYMENT OF HOMEWORKERS IN CERTAIN INDUSTRIES

29 CFR Part 530 is amended as follows:

1. The citation or authority for Part 530 is revised to read as follows:

Authority: Sec. 11, 52 Stat. 1066 (29 U.S.C. 211) as amended by Sec. 9, 63 Stat. 910 (29 U.S.C. 211(d)); Secretary's Order No. 6–84, 49 FR 32473, August 14, 1984; and Employment Standards Order No. 78–1, 43 FR 51469, November 3, 1978.

2. Section 530.2 is revised to read as follows:

§ 530.2 Restriction of homework.

Except as provided in § 530.4(c), no work in the industries defined in paragraphs (d) through (j) of § 530.1 shall be done in or about a home, apartment, tenement, or room in a residential establishment unless a special homework certificate issued and in effect pursuant to this part has been obtained for each homemaker or unless the homeworker is so engaged under the supervision of a Sheltered Workshop, as defined in § 525.2 of this chapter.

3. A new paragraph (c) and OMB Control Numbers are added to § 530.4 as follows:

530.4 Terms and conditions for the issuance of certificates.

* * * * *

(c) A certificate may be issued to an employer authorizing the employment of homeworkers in the knitted outerwear industry, as defined in § 530.1(f) of this part; this certificate may be issued irrespective of whether individual homeworkers meet the conditions set forth in paragraph (a) of this section. In the absence of a certificate, the employment of homeworkers in this industry is prohibited, and an employer violating this prohibition is subject to all the sanctions provided in this Act and in this subpart, including an injunction restraining the employment of homeworkers. Certificates authorizing

such employment may be issued on the following terms and conditions upon written notice to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210:

(1) The notice of request for certification shall be signed by the employer and shall contain the name of the firm, its mailing address, and the physical location of the firm's principal place of business. The employer shall provide the Administrator, within thirty (30) days, a notice of each change of address of the principal place of business. The notification shall be in writing and addressed to the Administrator, Wage and Hour Division, Employment Standards Administration, 200 Constitution Avenue, NW., Washington, D.C. 20210. Such change of address shall be deemed effective upon receipt by the Administrator unless a later date is specified in the notice.

(2) A request for certification under this subpart may be denied for cause.

(i) Employment of homeworkers in the knitted outerwear industry without a certificate may be cause for denial of a request for certification for a period up to one year from the final date of the violation.

(ii) Failure to pay back wages found to be due as a result of a violation of sections 15(a)(2) or 15(a)(3) shall be cause for denial of a certificate until the back wages are paid.

(iii) Failure to pay civil money penalties determined to be owing for a violation of section 15(a)(4) shall be cause for denial of a certificate until the civil penalties are paid.

(iv) Violation of any provision of the FLSA or the regulations issued thereunder may be cause for denial of a certificate for a period of up to one year from the final date of the violation.

(v) An open investigation may result in the withholding of a certificate pending the conclusion and resolution thereof.

Before any certificate is denied, interested parties shall be notified in writing of the facts warranting such denial and afforded an opportunity to demonstrate or achieve compliance. In appropriate circumstances, the Administrator shall afford an opportunity for a hearing to resolve the disputed matter.

(3) An employer issued a certificate under this subpart may be subject to investigaton at any time to determine compliance with the provisions of the Fair Labor Standards Act.

(Information collection requirements in paragraph (a) have been approved by OMB under Control No. 1215–0005; information collection requirements in paragraph (c) have been approved by OMB under Control No. 1215–0159.)

4. Section 530.7 is revised to read as follows:

§ 530.7 Revocation and cancellation.

Any certificate may be revoked for cause at any time. Violation of any provision of the Fair Labor Standards Act shall be sufficient grounds for revocation of all certificates issued to an employer, in which event no certificates shall be issued to the offending employer for a period of up to one year. Before any certificate is cancelled, however, interested parties shall be notified in writing of the facts warranting such cancellation and afforded an opportunity to demonstrate or achieve compliance. In appropriate circumstances, the Administrator shall afford an opportunity for a hearing to resolve the disputed matter.

5. Section 530.8 is revised to read as follows:

§ 530.8 Preservation of certificates.

A copy of all certificates provided to the employer under this part shall be maintained for a period of at least three years after the last employment under the certificate.

[FR Doc. 84–29180 Filed 11–2–84; 8:45 am]
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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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23	13.00	Apr. 1, 1984
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34 Parts:		
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400-End	15.00	July 1, 1983
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36 Parts:		
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43 Parts:		
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1000-3999	14.00	Oct. 1, 1983
4000-End	7.50	Oct. 1, 1983
44	12.00	Oct. 1, 1983
45 Parts:		
1-199	9.00	Oct. 1, 1983
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1200-End	9.00	Oct. 1, 1983
46 Parts:		
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200-399	12.00	Oct. 1, 1983
400-End	7.00	Oct. 1, 1983
47 Parts:		
0-19	12.00	Oct. 1, 1983
20-69	14.00	Oct. 1, 1983
70-79	13.00	Oct. 1, 1983
80-End	13.00	Oct. 1, 1983
48	1.50	[2] Sept. 19, 1983
49 Parts:		
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400-999	13.00	Oct. 1, 1983
1000-1199	12.00	Oct. 1, 1983
1200-1299	12.00	Oct. 1, 1983
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50 Parts:		
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[1] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1984. The CFR volume issued as of Apr. 1, 1980, should be retained.

[2] Refer to September 19, 1983, FEDERAL REGISTER, Book II (Federal Acquisition Regulation).

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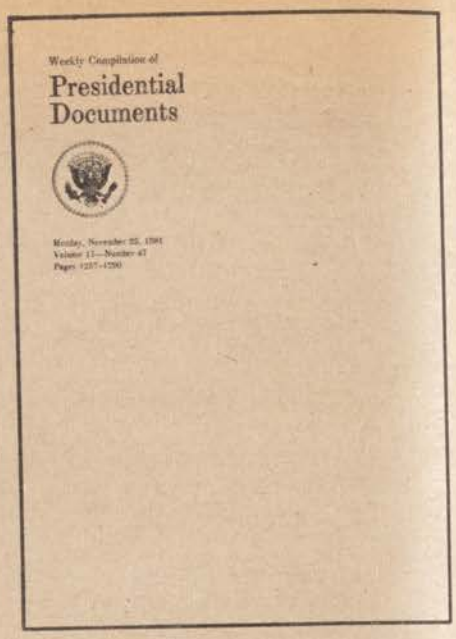

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